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In the

Supreme Court of the United States

October Term, 1959

No. 200

TRAYTON L. LATHROP,

Appellant,

vs.

JOSEPH D. DONOHUE,

Appellee.

APPEAL FROM THE SUPREME COURT
OF THE STATE OF WISCONSIN

JURISDICTIONAL STATEMENT OF APPELLANT

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In the

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No. .....

TRAYTON L. LATHROP,

Appellant,

vs.

JOSEPH D. DONOHUE,

Appellee.

APPEAL FROM THE SUPREME COURT
OF THE STATE OF WISCONSIN

JURISDICTIONAL STATEMENT OF APPELLANT

I. DECISION APPEALED FROM.

This is an appeal from a judgment of the Supreme Court of the State of Wisconsin. The opinion delivered in that court is reported as *Lathrop v. Donohue* (1960) 10 Wis. 2d 230, 102 N. W. 2d 404. The opinion is appended to this statement as a part of the appendix, pp. 1a-22a.

II. THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

A. *The Nature of the Proceeding.*

This is an action commenced in the Circuit Court for Dane County, Wisconsin, to recover from the appellee,* Joseph D. Donohue, the sum of Fifteen Dollars ($15.00) which was paid to him under the coercion of the rules adopted by the Supreme Court of Wisconsin which compel membership in and support of an association known as the State Bar of Wisconsin by all persons engaged in the practice of law in that state. It was asserted that the funds had been unlawfully obtained by the defendant from the plaintiff because said rules were in contravention of the Fourteenth Amendment of the United States Constitution. The action was transferred to the Circuit Court for Fond du Lac County, Wisconsin, at the request of the defendant. Said court, upon a demurrer to the complaint, entered judgment on October 23, 1959, dismissing the appellant's** complaint upon its merits. (R. 54-55, Ap. 39a-40a) The Supreme Court of the State of Wisconsin affirmed the Circuit Court judgment, holding that said rules do not violate the Fourteenth Amendment of the United States Constitution. (R. 58, Ap. 21a-22a)

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*Hereinafter referred to as defendant.

**Hereinafter referred to as plaintiff.

B. *Dates of Judgment Appealed From and Notice of Appeal.*

The judgment of the Supreme Court of the State of Wisconsin, which is being appealed from, was dated April 5, 1960, and entered on April 5, 1960.

The notice of appeal was filed on May 5, 1960, in the Supreme Court of the State of Wisconsin.

C. *Statute Conferring Jurisdiction.*

Jurisdiction over this appeal is conferred by 28 U. S. C. section 1257 (2) which provides for appeals from the highest court of a state

> ". . . where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

D. *Cases Sustaining Jurisdiction.*

The rules of the Supreme Court of the State of Wisconsin constitute a statute under the provisions of said section 1257 (2). *King Mfg. Co. v. Augusta* (1927) 277 U. S. 100, 102-114; *Stevens v. Griffith* (1884) 111 U. S. 48, 50. See also *A. F. of L. v. Watson* (1946) 327 U. S. 582, 592.

E. *Statute Involved.*

The order of the Supreme Court of the State of Wisconsin promulgating for a period of two years from January 1, 1957, rules and by-laws for an association to be known as State Bar of Wisconsin is published in Volume 273 Wisconsin Reports on page vii to viii and is dated December 7, 1956. The opinion accompanying said order appears in 273 Wis. p. viii to x and in 79 N. W. 2d 441. The order of the court continuing the rules and by-laws in effect indefinitely is published in 5 Wis. 2d pp. 618, 627, and in 93 N. W. 2d 601, 605, and is dated December 22, 1958.

The rules and by-laws as originally adopted are published in 273 Wis. pp. xi to xxxvii. A copy of the rules and by-laws in the form in which they were effective on December 22, 1958 and at the time of institution of this action are attached to the complaint (R. 17a to 28a), and are published in the supplement to Volume 32, No. 1, Wisconsin Bar Bulletin, pp. 23-44 (Feb. 1959). The changes made in the original rules related only to dues for younger members and election procedure. *In re Integration of the Bar* (1958) 5 Wis. 2d 618, 620-621, 93 N. W. 2d 601, 602.

Portions of said rules and by-laws compel all persons practicing law in the State of Wisconsin to belong to and financially support the association described therein.

The State Bar Rules and By-laws provide in part as follows:

> "Each person licensed to practice law in this state shall enroll in the State Bar by registering his name with the secretary of the association within sixty days after the effective date of these rules, in accordance with

the requirements of the By-laws. Every person who becomes licensed, after these rules become effective, to practice law in this state shall enroll in the State Bar in like manner by registering his name with the secretary of the association within ten days after admission to practice. . . ." *(Rule 2, Section 2)*

"No individual other than an enrolled active member of the State Bar shall practice law in this state or in any manner hold himself out as authorized or qualified to practice law. . . ." *(Rule 2, Section 4)*

"Every active member shall pay membership dues in such amount not exceeding twenty dollars per year, as may be fixed in the By-laws, and every inactive member shall pay membership dues in such amount, not exceeding ten dollars per year, as may be fixed by the By-laws. All dues shall be paid to the treasurer of the association and shall contitute a fund for the payment of the expenses of the association." *(Rule 2, Section 5)*

"If the annual dues of any member remain unpaid at the expiration of ninety days from the time when such dues are due and payable, the membership of such member may be suspended by the board of governors in the manner provided in the By-laws, and no person whose membership is so suspended for non-payment of dues shall be entitled to practice law during the period of such suspension." *(Rule 2, Section 6)*

"Membership dues for each calendar year shall be due and payable to the treasurer on the second day of January of such year. Every active member shall pay annual dues of fifteen dollars, except that for the calendar year of admission to the Bar of this state or of any other state and for the next succeeding four calendar years the dues shall be eight dollars per year. Every inactive member shall pay annual dues of five dollars. . . ." *(By-laws, Art I, Section 2)*

". . . On the first day of April in each year the secretary shall deliver to the board of governors a list of all members whose dues remain unpaid after notification in the manner aforesaid, accompanied by proof of mailing the required notice of arrears in each case. Thereupon the board of governors by resolution shall suspend the membership of each such dues-delinquent member, and shall file with the clerk of the Supreme Court a certified copy of the resolution declaring the suspension, and shall mail a copy thereof to each person whose membership has been thereby suspended. . . ." *(By-laws, Art. I, Section 3)*

III. THE QUESTION INVOLVED RELATES TO COERCED MEMBERSHIP IN AND SUPPORT OF AN ASSOCIATION OF ATTORNEYS.

This appeal presents the question of whether a state, under the Fourteenth Amendment to the United States Constitution, may coerce lawyers to belong to and support an association of lawyers. The question has a direct bearing upon the larger question of whether the state, under the Fourteenth Amendment to the United States Constitution, may coerce any class of individuals to belong to an association.

The question, as presented in the Notice of Appeal, is as follows:

> "Do the orders and rules of the Supreme Court of the State of Wisconsin referred to in paragraph I of this Notice of Appeal and the rules and by-laws which were promulgated thereby deprive the appellant, who is a native of the State of Wisconsin and a resident licensed practicing attorney in said state and has no income outside of that received from the practice of

law, of his rights of freedom of association, assembly, speech, press, conscience and thought, or of his liberty or property without due process of law or deny to him equal protection of the law or otherwise deprive him of rights under the Fourteenth Amendment of the Constitution of the United States by compelling him, as a condition to his right to continue to practice law in the State of Wisconsin, to be a member of and financially support an association of attorneys known as the State Bar of Wisconsin, which association functions substantially the same and carries on substantially the same work as voluntary associations of attorneys, and, among other things, uses its property, funds and employees for the purpose of influencing a broad range of legislation and public opinion; and, therefore, are said orders, rules and by-laws, insofar as they coerce the appellant to be a member of and support said association, invalid on the ground that they are repugnant to the Constitution of the United States?"

IV. STATEMENT OF THE CASE.

A. *Facts and Background.*

1. Status of Plaintiff and Defendant; Payment of Dues Under Protest.

The plaintiff is a native of the State of Wisconsin, a resident of the City of Madison in said state, and is engaged in the practice of law as a member of a law firm in said city. (R. 9)

He received a Bachelor of Arts degree from the University of Wisconsin in 1943, and after an interval for military service, was graduated from the Law School of the University of Wisconsin in 1948. (R. 9-10)

In February, 1948, the plaintiff was licensed to practice law in the State of Wisconsin, after having complied with all of the requirements therefor, and has been so licensed and has practiced law in the City of Madison, Wisconsin, ever since. (R. 10)

The plaintiff's only training and only means of livelihood is as a lawyer and he has no income outside of that derived from the practice of law. (R. 10)

Prior to January 1, 1957, there was an association of lawyers known as Wisconsin Bar Association. There was no coercion on the part of the state requiring the plaintiff to belong to that association or any other association. (R. 10) The plaintiff had been a member of the Wisconsin Bar Association from the time he had been admitted to the practice of law. (R. 10)

The statute involved which was adopted on Dec. 7, 1956 by the Wisconsin Supreme Court, in the form of rules, required all attorneys practicing law in the State of Wisconsin to belong to and support a state-wide bar association described therein as the State Bar of Wisconsin. (Supra 4-6) These rules became effective on January 1, 1957, and were to exist for two years. (R. 11) On December 22, 1958, the Wisconsin Supreme Court continued the rules in effect for an indefinite period of time. (R. 12)

As required by the said rules, the plaintiff enrolled in the State Bar of Wisconsin and paid the required dues for 1957 and 1958. (R. 12) However, the plaintiff paid the dues for the year 1959 under protest to the defendant on the ground that the rules violated the United States Constitution. (R. 15-16, 38-39) The defendant was the treas-

urer of the association. (R. 9) This action was brought on June 8, 1959 (R. 7) to recover the amount so paid.

2. Nature, Objects and Activities of the Wisconsin Association.

The State Bar of Wisconsin is substantially a continuation of the Wisconsin Bar Association with a different type of board of governors. It started out with the same general officers (R. 11), the same executive director (R. 13), the same property, the same files (R. 12) and the same publication. (R. 14) It selects the delegates to the American Bar Association which were formerly selected by the Wisconsin Bar Association. (R. 26) It functions in substantially the same manner and carries on substantially the same work as did the Wisconsin Bar Association. (R. 14)

The word "association" is used over 60 times in the rules and by-laws. (R. 17a-28)

The only difference between the functions of the association before and after the December 7, 1956 order is the compulsory membership and compulsory dues features introduced by said rules. (R. 14)

The State Bar of Wisconsin functions in substantially the same manner and carries on substantially the same work as does the American Bar Association, although on a smaller scale. (R. 14)

The State Bar of Wisconsin engages in a wide variety of activities.

It advances public acceptance of the objects and purposes of the organization, and in this connection uses its employees and funds to promote a ladies auxiliary. (R. 15)

It publishes a periodical, known as the Wisconsin Bar Bulletin, devoted to articles suggesting changes in the laws, discussion of present status of the laws, biographical sketches, advertising of books, publications, trust services, life and health insurance, and a variety of other matters. (R. 14)

One of the main objects and purposes of the association has been at all times to promote law reform in fields relating to the courts and the practice of law. This includes changes in laws and constitutional provisions relating to court systems, systems of selecting judges, tax codes, corporate codes, property codes, criminal codes, law among nations and laws affecting compulsory associations for lawyers. (R. 14-15)

Ten per cent of the $14,000.00 annual salary of the executive director is deemed by the association to be attributable to his lobbying activities on behalf of the association.[1]

The association has used its funds in opposition to the adoption of legislation favored by the plaintiff, and thus the association has acted contrary to plaintiff's convictions and belief. (R. 15)

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[1]Report of State Bar of Wisconsin dated June 6, 1960, and filed June 7, 1960 with Wisconsin Secretary of State. This report may be judicially noticed by the Wisconsin Supreme Court, **Wis. Truck Owners Ass. v. Public Service Comm.** (1932) 207 Wis. 664, 667, 242 N. W. 668, 674 and, therefore, it may be judicially noticed by the Supreme Court of the United States. **Adam v. Saenger** (1938) 303 U. S. 59, 63. See Wis. Stats. 1957, Sec. 13.70, which provides that registration as a lobbyist and reports as to lobbying need be done only when personal contacts are made with legislators. It is not required in connection with appearances before legislative committees.

Other activities of the association include postgraduate legal education of lawyers, public relations activities, discouraging unauthorized practice of the law, establishment of a minimum fee schedule, legal aid, investigation and adjustment of grievances, and publicizing pending and adopted legislative proposals. (R. 74-79, Ap. 16a-21a)

The statement of receipts and disbursements for the year 1959 which was referred to in the opinion of the court below (R. 75) is made a part of of the appendix. (Ap. 47a-48a) The resolution of the board of governors adopted on June 12, 1957 on the motion of Alfred E. La France which was approved by the Supreme Court in *In re Integration of Bar* (1958) 5 Wis. 2d 618, 621, 93 N. W. 2d 601, is also made a part of the appendix.[2] (Ap. 42a-46a)

3. Nation-Wide History and Nature of the Compulsory (Integrated) Bar Association Movement.

Wisconsin is not unique in adopting rules compelling attorneys to become members of and support a bar association. At least 25 other states are reported to have provided for compulsory bar associations, which are referred to as "integrated bar" associations. *In re Integration of Bar* (1958) 5 Wis. 2d 618, 621, 93 N. W. 2d 601, 603.

The integrated bar idea was formulated and pushed by Herbert Harley who was the founder and for many years the secretary of the American Judicature Society. Harley was a lawyer who gave up the law practice and became a newspaper editor. With the financial backing of

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[2]This may be judicially noticed. See the cases cited in footnote 1, supra. See also the statement of the court below on judicial notice. (R. 66-67, Ap. 8a; R. 71, Ap. 13a)

Charles F. Ruggles, a well-to-do lumberman, Harley organized the Society in 1913 after spending a year, on a salary paid by Mr. Ruggles, contacting and obtaining the assistance of leading lawyers, judges and law teachers throughout the country, including Pound, Wigmore, and Chief Justice Winslow, of the Wisconsin Supreme Court. Originally the society was conceived to be largely a research organization, but during World War I while the directors were distracted with war duties, Harley started the Journal of the society, a paper distributed free of charge to lawyers throughout the country. Thirty-five thousand copies of the first issue were distributed. Ruggles, remaining always in the background without permitting the use of his name, supported the society until 1925, having contributed more than $93,000.00.[3]

The first issue of the Journal was published in June 1917 and it urged that there should be a movement for integrating the profession.[4]

The Journal published a proposed model act in 1918.[5] In support of the act it was urged that judiciary committees of the legislatures snub state bar associations because they represent only a fraction of the attorneys.[6]

It was stated, however, that at the beginning compulsory membership may not be possible because it would invite the opposition of the unfit and of skeptical worthy

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[3]**The American Judicature Society and its Work** by Glenn R. Winters, 10 Alabama Lawyer, pp. 201-209 (1949). "The greatest single accomplishment of the American Judicature Society has been its promotion of Bar integration." Ibid 207. See also Vol. 28, Journal of the Bar Association of the State of Kansas, pp. 333, 334 (Feb. 1960).

[4]Volume 1, #1, Journal American Judicature Society, June 1917, p. 21.

[5]Volume 2, #4, Ibid, pp. 105, 111-124 (Dec. 1918).

[6]Ibid, p. 107.

lawyers.[7] Section 3 of the model act had a provision for compulsory membership which was to be used at the option of the particular state.[8]

Section 28 (c) of the act provided that "The Board [of Governors] shall have the power to take such action as may promote the social intercourse of the members and aid in the improvement of the administration of justice in the State."[9]

Coupled with the campaign for the integrated bar the Journal of the Society gave prominence to the idea that the bar associations must exercise influence upon the electors and the legislators. A paper by William D. Guthrie published in 1921[10] urged that "A special and urgent duty of education and propaganda rests upon the Bar of the present generation. . . ."

In an address before the Oregon State Bar Association in 1924, Mr. Harley stated:

> "The bar ordinarily finds it difficult and sometimes impossible to influence the legislature. . . ."[11]

He stated:

> "One of the reasons often urged for integration is that the un-integrated bars of the past and present, while performing some excellent work in legislation, seldom see their drafts enacted into law. It is obvious that an integrated bar would have a great deal more

[7]Ibid, p. 109.

[8]Ibid, p. 111.

[9]Ibid, pp. 117-118.

[10]Vol. 5, #2, Ibid, p. 41 (Aug. 1921).

[11]Vol. 8, Ibid, p. 72 (Oct. 1924).

persuasive force with legislatures than now obtains. . . . "[12]

Anticipating constitutional questions, Mr. Harley stated that a lawyer is merely a ". . . privileged officer of the state . . ." and has no ". . . right under natural law, or under common law or under any constitution to be a lawyer. . . ."[13]

On another occasion Harley urged that the state could make lawyers a body of salaried civil servants, could define the activities of every lawyer and his earnings, could restrict to any extent the number of lawyers, could forbid a union of lawyers, as hostile to popular government, and could discharge lawyers at the end of any annual term."[14]

As a result of the prodding of the Society, North Dakota adopted an integrated bar act in 1921,[15] and numerous states have followed suit.

The campaign is still going on. Currently the integrated bar idea is being advanced in Kansas. It is urged there that:

> ". . . In many instances proposed legislation becomes law as pressure is exercised and influence of large groups is brought to bear upon the legislative body demanding its enactment. The individual today speaks with little authority unless he has the backing of some organized group. Our Kansas Bar Association has, and continues to work for better and more operative legislation. They are somewhat hampered in that

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[12]Ibid, p. 79.

[13]Ibid, p. 74.

[14]Vol. 8, Law Society Journal, pp. 80, 88 (May 1938).

[15]Vol. 5, #1, Journal American Judicature Society, June, 1921, p. 16.

they are not an official statutory organization, nor do they represent all the attorneys of the state. . . ."[16]

The integrated bar movement, so far, has had comparatively little success in the Middle Atlantic, Midwestern, Eastern and New England States.[17]

For example, the integrated bar was first considered in New York in 1919. A bill to provide for an integrated bar which, among other things, would nominate candidates for judicial office, was defeated in 1925 and since then it has not received any serious consideration in that state.[18]

The pattern for integrated bars throughout the country is substantially the same, although there is variation as to whether it is provided for by enactment of the highest court or by enactment by the legislature.[19]

Throughout the country the functions of an integrated bar are substantially the same as those of a voluntary association.[20] The power of an integrated bar is ordinarily no greater than that of a voluntary group ". . . except for that additional power which results from a larger membership and greater economic resources. . . ."[21]

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[16]Vol. 28, Journal of The Bar Association of the State of Kansas, pp. 333, 335 (Feb. 1960).

[17]**An Analysis of the Integrated Bar** by Clarence F. Giles, 17 Albany Law Review, pp. 231, 232 (1953).

[18]Ibid, pp. 239-240.

[19]Ibid, p. 232.

[20]Ibid, p. 235.

[21]Ibid, p. 235.

4. History and Nature of the Movement In Wisconsin.

In Wisconsin, the integration idea had been considered by the Wisconsin Bar Association as early as 1923.[22] In 1935 a bill for creation of a compulsory bar association known as the "Wisconsin Bar Association" was passed by both houses of the legislature, but vetoed.[23] Bills for integration were introduced in the 1937, 1939, and 1941 legislatures, but failed of passage.[24]

In 1943, a bill authorizing the Supreme Court to provide for a compulsory association to be known as "State Bar of Wisconsin," was passed by both houses of the legislature, but was vetoed.[25] The veto was purportedly overridden. The act was published as section 256.31 Wisconsin Statutes. A controversy arose as to whether the necessary two-thirds vote of those present in the assembly was obtained. The Wisconsin Supreme Court, in a self advisory opinion, ruled that the veto was validly overriden,[26] and also ruled that the act did not delegate legislative powers and did not deny equal protection of the laws.[27] Justice Fowler dissented, stating that membership in an integrated bar had no bearing on the qualifications of a person to act as an attorney, and that if the legislature may cause integra-

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[22]See history of bar integration in Wisconsin set forth in **Integration of Bar Case** (1943) 244 Wis. 8, 14, 11 N. W. 2d 604, 607.

[23]Ibid, Bill Jacket for Bill 119-S, 1935 Legislature, Secretary of States Office of State of Wisconsin.

[24]244 Wis. p. 14, 11 N. W. 2d p. 607.

[25]244 Wis. p. 16, 11 N. W. 2d p. 608. See veto message of Governor Walter S. Goodland, pp. 40a-41a of appendix.

[26]244 Wis. pp. 16-36, 11 N. W. 2d pp. 609 to 617.

[27]244 Wis. pp. 36-45, 11 N. W. 2d pp. 617 to 621.

tion of the bar it may likewise organize any trade or class of workmen.

No rules were considered, and the court decided not to adopt any rules at the time."

In 1946 the President of the Wisconsin Bar Association petitioned for integration of the bar. The Wisconsin Supreme Court, with one new Justice since its 1943 decision, who did not participate, declined to order integration. The court stated that an integrated bar could not use its dues to maintain a legislative agent, that it doubted that it could conduct propaganda in defense of the legal profession and that it could not seek legislative definition of the bounds of the legal profession."

In 1955 the movement for integration of the bar was revitalized by Alfred E. La France, President of the Wisconsin Bar Association. He urged that all lawyers of the state should participate in legislative matters, in determining the qualifications of attorneys, in problems of judicial administration, in judicial selection, in legal aid, in handling grievances and in a "vast program" of public relations. With respect to legislative work, he stated:

> "All of the lawyers of the state, through their association, should participate in making recommendations for changes and advancements in the procedural and substantive law of the state; all of the lawyers of the state through their unified association, should actively participate in the molding of all future legislation and in promoting educational programs concerning proposed and considered constitutional changes.""

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[28]244 Wis. pp. 54, 56a-56b, 11 N. W. 2d p. 625, 12 N. W. 2d 699-700.

[29]**In re Integration of Bar** (1946) 249 Wis. 523, 529, 25 N. W. 2d 500, 502-503.

[30]28 Wis. Bar Bulletin, No. 5, p. 6 (Oct. 1955).

On petition by Mr. La France and others, authorized by the House of Gorvernors of the Wisconsin Bar Association, alleging that only 68% of the lawyers in the state are members of the Wisconsin Bar Association,[31] the Supreme Court of Wisconsin, in June 1956, decided to order integration of the bar and directed that rules be drawn by the petitioners.[32] The reason assigned was that it would result in the registration of all lawyers then practicing in the state.[33] All of the members of the court participating in the 1946 decision, except for one, had been replaced.

Rules for integration were adopted on December 7, 1956, for a period of 2 years from January 1, 1957,[34] pursuant to the inherent power of the court, rather than statutory authority. (R. 17-A)

On December 22, 1958, the Wisconsin Supreme Court continued the integrated bar rules, with minor changes made since 1956, for an indefinite period of time.[35] The court commended the board of governors for the legislative procedure and working rules which were adopted by it.[36] It stated that the integrated bar does not control the thinking of any of its members, that every one understands that the policies of State Bar are distinct from each individual, that individuals can express their own opinion, and that it is

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[31]21 Wis. Bar Bulletin, No. 2, p. 21 (April 1956) (R. 11).

[32]**In re Integration of Bar**, (1956) 273 Wis. 281, 285, 77 N. W. 2d 602, 604.

[33]273 Wis. pp. 284-285, 77 N. W. 2d 604.

[34]273 Wis. vii et seq., 79 N. W. 2d 441-442 (R. 11).

[35]**In re Integration of the Bar** (1958) 5 Wis. 2d 618, 627, 93 N. W. 2d 601, 605 (R. 12).

[36]5 Wis. 2d p. 621, 93 N. W. 2d p. 602. The procedure is set for in the appendix pp. 42a to 46a.

an independent, democratic organization."[17] The court expressly overruled the contrary statements in the 1946 opinion."[18]

B. *The Circuit and Supreme Courts of the State of Wisconsin Decided That the Statute Involved Is Valid and Not Repugnant to the Fourteenth Amendment.*

The United States Constitutional question sought to be reviewed was raised in the complaint in this action which was filed in a Circuit Court for the State of Wisconsin. (R. 16, 40, Ap. 23a)

The defendant demurred to the complaint upon three grounds, namely (1) that the circuit court lacked jurisdiction over the subject matter of the action, (2) that there was a defect of parties defendant, and (3) that the complaint does not state a cause of action. (R. 34)

The circuit court ruled against the plaintiff on each of the three grounds. (R. 46-51, Ap. 33a-39a)

The circuit court held that if the practice of law were a matter of right, there would be a "serious question" as to the validity of the rules requiring the payment of dues. The court held, however, that the practice of law is only a privilege and therefore no one is being deprived of any right under the Constitution of the United States. (R. 49-50, Ap. 37a)

The judgment of the circuit court dismissed the complaint "upon its merits." (R. 54-55, Ap. 39a-50a)

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[17] 5 Wis. 2d p. 623, 93 N. W. 2d p. 603.

[18] 5 Wis. 2d p. 626, 93 N. W. 2d p. 605.

The United States Constitutional question was again raised in the Wisconsin Supreme Court by appeal to that court from the judgment of the circuit court.

The Supreme Court of Wisconsin stated that, "This court has determined to consider the constitutional issue raised on its merits and not to dispose of its appeal upon procedural grounds." (R. 62, Ap. 3a)

The Wisconsin Supreme Court stated that, "The plaintiff bottoms his contention, that the integration of the bar is unconstitutional, upon the thesis that such integration violates the First Amendment freedoms of free speech, press, assembly and petition which are inherent in the due-process and equal-protection-of-the-laws clause of the Fourteenth Amendment. . . ." (R. 63, Ap. 4a) The Wisconsin Supreme Court also stated that the plaintiff argues that ". . . the right not to belong to an association is also a freedom protected by the Fourteenth Amendment. . . ." (R. 64, Ap. 5a)

The court further stated that the rules do not compel the plaintiff to associate with anyone, and do not compel him to attend meetings, but merely require him to pay annual dues to the association. (R. 64-65, Ap. 6a)

The court held that the right to practice law is not a right but is a privilege subject to regulation; provided that the regulations do not impose an unconstitutional burden or deny due process. (R. 65, Ap. 6a)

The court held that it is of the opinion that ". . . the public welfare will be promoted by securing and publicizing the composite judgment of the members of the bar of the state on measures directly affecting the administra-

tion of justice and the practice of law. The general public and the legislature are entitled to know how the profession as a whole stands on such type of proposed legislation. . . ." (R. 67, Ap. 9a)

The court held that it was entitled to balance its determination of public interest against rights of free speech, assembly or petition. (R. 70, Ap. 11a)

The order and judgment of the Wisconsin Supreme Court declared that its rules adopted and continued in force by its orders dated December 7, 1956, and December 22, 1958, do not violate the Fourteenth Amendment of the Constitution of the United States and affirmed the judgment of the circuit court. (R. 58, Ap. 21a)

V. A SUBSTANTIAL AND IMPORTANT UNITED STATES CONSTITUTIONAL QUESTION IS INVOLVED.

A. *The Question Involved Is of National and World-wide Significance.*

The question of whether the several states or the United States may convert private voluntary associations into compulsory associations, is not only of national but of world-wide significance.

It is of national significance since over one-half of the states of the United States have converted voluntary associations of lawyers into compulsory associations—all since World War I.

It is of world-wide significance since Article 20, section 2 of the Universal Declaration of Human Rights provides that

"No one may be compelled to belong to an association."[9]

The significance of the case is not limited to one occupation or profession, but it extends to all occupations and all other classifications of the people now or hereafter made.

The significance extends to teachers' associations, medical associations, and trade associations. It extends to associations of manufacturers who do business with the government. It extends to associations and parties of governmental employees and office holders.

The significance extends to associations and groups organized on a national level. If a state can compel its lawyers and teachers to belong to a state-wide association, the national government may compel lawyers who give advice on federal questions or practice in federal courts and teachers and college professors who are paid with the aid of federal moneys to belong to nation-wide associations.

The idea that the force of the state should be used in fostering compulsory associations is in comparative infancy in this country, but has already made serious inroads.

As associations of all kinds are organized and integrated, government by class and corporations of classes is substituted for government by the whole people.

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[9]Basic documents of the United Nations, edited by Louis B. Sohn (1956) pp. 132, 134.

B. *Voluntary Associations Form the Basis for Political Liberty.*

John R. Commons, of the University of Wisconsin, one of the greatest political economists of our time made astute observations of the compulsory syndicates (associations) in Italy—the capitalist syndicates, the agricultural syndicates, the labor syndicates and the professional syndicates:

> ". . . In order to carry on business or get a job each individual is compelled to become a member or at least pay dues to support his syndicate. . . ."
>
> * * *
>
> "It is these compulsory corporations that have taken the place of parliament. They are both political and economic. . . ." INSTITUTIONAL ECONOMICS (1934) by John R. Commons p. 883.

Commons emphasized the absolute requisite of "voluntary associations" to the American type of government:

> ". . . *every generation must review its bill of rights.* They are the rights not only of free speech, free press, and free investigation, *but most important, the rights of free association. . . .*" *Ibid*, p. 901 (Emphasis added)
>
> ". . . They [the people] retain liberty for themselves by collective action, either *by voluntary associations* or political parties." *Ibid*, p. 902 (Emphasis added)

C. *Freedom of Association Is Protected By Many Guarantees Entailed In the Fourteenth Amendment.*

Freedom of association is protected by the Fourteenth Amendment of the United States Constitution against state action. *Bates v. City of Little Rock* (1960) 361 U. S. 516, 523.

It is necessarily implicit in the guarantees of liberty of the Fourteenth Amendment that persons shall not be required to join associations or parties.

It is not an answer to say that the practice of law is a privilege, as the court below did. (R. 65, Ap. 6a). Other courts have justified their action on the same ground. This is erroneous. See pp. 28-29, *infra*.

It is no answer to say as did the court below that the requirement of payment of dues to an association does not deprive one of his rights of free speech, assembly or petition.[*] (R. 70, Ap. 13a) Anyone with only the rudiments of constitutional rights in mind, would vehemently assert that exaction of annual dues to support the Socialist, Republican or Democratic parties is a deprivation of his freedom of speech, assembly and petition. The exaction gives those in control of the organization the economic power to speak with an amplified voice so as to obliterate and lessen the effect of the words of the minority. It is inherent that ones right of speech, assembly and petition are im-

[*] That a state may often regulate occupations and impose a reasonable special tax to cover the cost of such regulation by the state is not questioned, provided that the regulations "have a rational connection" with the fitness of individuals to engage in the occupation. **Schware v. Board of Bar Examiners** (1957) 353 U. S. 232, 239. The power to tax or to regulate does not include the power to expropriate money from one person or group for the benefit of another. **United States v. Butler** (1935) 297 U. S. 1, 61.

paired. Also, it is an imposition upon one's right of freedom of conscience to compel him to be a member of an association or support causes. See *Thomas v. Collins* (1945) 323 U. S. 516, 530-531; *Speiser v. Randall* (1958) 357 U. S. 513, 535-536 (concurring opinion).

Nor it is an answer to say that the activities of the association or party are limited only to matters which directly bear upon the occupation of the members.

The court below emphasized that the rules and by-laws limit legislative activity of the association to matters affecting the courts, and judges, and the practice of law. (R. 66-67, Ap. 8a) This, of course, is not a narrow, but an extremely broad field.

What can be more important, more substantive, more vital to the government than the court system! It is one of the three major divisions of government. What kind of a judiciary a state has is, at least, as important as what kind of a legislature it has or what kind of an executive or what kind of boards and bureaus the state shall have!

Most all associations are political parties of at least a limited nature, even though they do not support named candidates. Their position on public issues necessarily affects the fate of candidates. Integrated bar associations are no exception. Indeed, one of the prime reasons for the requirement of compulsory membership is to make the association stronger politically.

Nor is it an answer, as the court below stated, that the association is like a judicial council. (R. 70-71, Ap. 12a-13a) A judicial council may be assumed to be in the nature of a committee of the legislature. Compulsory membership in

every association could be justified for the same reason—that it is a committee of the legislature with respect to the matter in which it is particularly concerned. However, a committee of the legislature does not act as a pressure group or have a lobbyist. A group cannot be considered a committee of a legislature when the legislature does not have or gives up the responsibility of directing the activities of the group. Cf. *Sweezy v. New Hampshire* (1957) 354 U. S. 234, 255. By the same token, it cannot be considered to be a committee of the court. See the statement of the Wisconsin Court that it is devoted to the ". . . ideal of a free and independent bar. . . ." (R. 68, Ap. 9a-10a)

Nor it is an answer to say as did the court below, that the integrated bar is a public body. (R. 10, Ap. 12a) If it is public it is only by virtue of the compulsion which is at issue here. All associations which are supported by the coercion of the state, may be deemed to be public by the same reasoning. But this does not make the support valid.

Coercion by the state to support associations, in addition to violating freedoms of speech, press, assembly and petition, is in contradiction of the equal protection clause of the Fourteenth Amendment.

Judge T. M. Cooley, the learned and astute commentator on constitutional law, stated that laws are not necessarily equal because purportedly they act upon all alike. He stated that a general law may establish regulations upon subjects not properly within the provisions of government and be cheerfully submitted to by the majority. Yet to the minority it may be ". . . in the highest degree offensive, unjust and tyrannical. . . ." He was of the opinion that a law for compulsory attendance upon the church

of the majority or the political meetings of the majority or the sports of the majority would by its very universality constitute offensive discrimination. Judge Cooley stated, ". . . Would not . . . its very universality, constitute offensive discrimination, precisely because it would compel conformity where equality of right would demand liberty of choice? . . ." *Story's Commentaries on the Constitution of the United States* (5 ed) (1891) Vol. 2, Chapter XLVII by T. M. Cooley, Section 1939, page 690.

D. *The Supreme Court of the United States Has Not Passed Upon the Question Here Involved.*

The Supreme Court of the United States has not passed upon the validity of any enactment, either federal or state, coercing persons to belong to or support an association as against a contention that it violates the guarantees of civil and political liberties. Cf. *Railroad Employees Department A. F. L. v. Hanson* (1956) 351 U. S. 225, 238, 242. There is now pending, however, a case where such a question may be decided. *International Association of Machinists et al. v. Street et al.*, No. 258, O. T. 1959.

E. *There Is Little Judicial Opinion On the Subject, and What There Is, Is Divided.*

1. Judicial Opinion In the Several States.

Although it is reported that over one-half of the states have compulsory associations of attorneys, very little discussion of the question here presented has occurred outside of that in the Wisconsin Court.

In Michigan, federal constitutional questions were raised, and disposed of on the ground that there is no constitutional right to practice law. *Ayres v. Hadaway* (1942) 303 Mich. 589, 6 N. W. (2d) 905, 907. *Emmons v. Smith* (D. C. E. D. Mich. S. D. 1944) 58 F. S. 869, 873.

In Minnesota, although the court did not order integration of the bar, it asserted that it had the right to do so on the ground that the practice of law is not a property right protected by the United States Constitution. *Petition for Integration of Bar* (1943) 216 Minn. 195, 12 N. W. 2d 515, 518 (1948) 226 Minn. 578, 34 N. W. 2d 157.

In Nevada, the court held that the United States Constitution is not violated because the right of citizens to follow common industrial occupations does not apply to the pursuit of the professions. *In re Scott* (1930) 53 Nev. 24, 292 P. 291.

The Circuit Court for Fond du Lac County, Wisconsin, in the case now before this court, held that there would be a serious question as to the constitutionality of rules requiring the payment of annual dues to the bar association if it were not that the practice of law is a mere privilege

not protected by the United States Constitution. (R. 49-50, Ap. 37a)

The idea announced by the foregoing courts is similar to that of Herbert Harley of the American Judicature Society. See *supra*, p. 14.

That the idea is erroneous is without question. *Royall v. Virginia* (1886) 116 U. S. 572, 583; *Schware v. Board of Bar Examiners* (1957) 353 U. S. 232, 238-239; *Green v. McElroy* (1959) 360 U. S. 474, 492. See also *Frost Trucking Co. v. Railroad Commission* (1926) 271 U. S. 583, 593-594.

There is no place in the constitutional system of the United States for the idea that any occupation, calling, or profession is a mere privilege in the absolute control of those temporarily holding the reins of the government. Enjoyment of life, the means of pursuing and obtaining happiness and safety have been deemed from the beginning of this country to be part of the liberty guaranteed by the United States Constitution.[1] The learning and the practice of law is perhaps the most fundamental of all means of obtaining happiness and safety in a constitutionality governed society.

The only other expression of judicial opinion, so far as we have been able to ascertain, which bears upon whether civil or political liberties have been violated by state coercion of support of bar associations, is found in the states of Arkansas, California, Idaho, Louisiana and New Mexico.

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[1] Amendments to the United States Constitution proposed by 1788 conventions of Virginia, New York and North Carolina. The FEDERALIST, edited by Paul L. Ford (1898) pp. 635, 639, 646. When a state confers a license to engage in a profession, it becomes a "valuable personal right" **Corrao v. Mortier** (1958) 4 Wis. 2d 492, 497, 90 N. W. 2d 623.

In Arkansas, the majority of the court held that a requirement of payment of dues to the association does not interfere with any freedom of choice. However, two dissenting Justices strongly urged that "liberty of thought" was violated and that there were serious constitutional objections. Subsequent manifestation of opinion by lawyers brought about the rescision of the court order for integration. *In re Integrating the Bar* (1953) 222 Ark. 35, 259 S. W. 2nd 144.

In California, the only holding on U. S. Constitutional issues is that procedural due process is not violated by the power of the association in disbarment matters, because its action is subject to review by the court. *In re Petersen* (1929) 208 Cal. 42, 280 P. 124, 125; *State Bar v. Jones* (1929) 208 Cal. 240, 280 P. 964.

In Idaho, a divided court held a compulsory bar association to be invalid. Two of the five man court based their decision, in part, on the ground that if there were to be compulsory associations for various callings, instead of a representative democracy, we would have class government. *Jackson v. Gallet* (1924) 39 Idaho 382, 228 P. 1068-1072. Subsequently integration was ordered by *In re Edwards* (1928) 45 Idaho 676, 266 P. 665, after a statutory change, meeting state constitutional objections. One Justice dissented objecting to compulsory exaction of funds for private interests. The majority held that since the dues were paid into the State Treasury and disbursed according to law, there could be no objection.

In Louisiana, the court held that the requirement of payment of dues to the bar association does not deprive attorneys of their freedom not to join the association, because

to so hold would deny the authority of the court to organize an integrated bar. *In re Mundy* (1942) 202 La. 41, 11 So. 2d 398, 401.

In New Mexico, the court held that no one is compelled to join an association because the integrated bar is not an association. *In re Gibson* (1931) 35 N. Mex. 550, 4 P. 2d 643, 648-649.

2. Judicial Opinion in Wisconsin.

In Wisconsin, there has been a split of judicial opinion. In *Integration of the Bar Case* (1943) 244 Wis. 8, 44, 11 N. W. 2d 604, 620, 12 N. W. 2d 699, a majority of the court held that integration would not violate the equal protection clause. Justice Fowler dissenting, pointed out that if lawyers may be integrated, so may the barbers, plumbers, machinists or the members of any other trade or class of workmen. 244 Wis. p. 56; 11 N. W. 2d p. 625.

Three years later, at least a majority of the same court raised questions as to whether the court may integrate the bar for the purpose of supporting a legislative agent or engaging in propaganda. *In re Integration of Bar* (1946) 249 Wis. 523, 529, 25 N. W. 2d 500, 502-503. But after another passage of time, at least a majority of the same court, composed, however, of different members, disagreed with these statements. *In re Integration of the Bar* (1958) 5 Wis. 2d 618, 626, 93 N. W. 2d 601, 605.

3. Judicial Opinion As to Other Types of Associations.

On the question of compulsory membership in other types of associations, judicial opinion as to the effect of guarantees of civil and political liberties is also divided, although the reason for division may be obscured in part by varying views as to what constitutes state action. *De Mille v. American Federation of Radio Artists* (1947) 31 Cal. 2d 139, 187 P. 2d 769; *Allen v. Southern Ry. Co.* (1959) 249 N. C. 491, 107 S. E. 2d 125; *International Association of Machinists v. Street* (1959) 215 Ga. 27, 108 S. E. 2d 796, on appeal No. 258 O. T. 1959. See also *Hagen v. Culinary Workers Alliance* (1952) 70 Wyo. 165, 246 P. 2d 778, 788-789.

F. *Unless the U. S. Supreme Court Grants a Hearing, the Plaintiff Will Have No Right to Be Heard By An Independent Tribunal.*

The Wisconsin Supreme Court decided the constitutionality of its own enactment. Here we are faced with the unique situation where it is the action of the state court itself which might result in the denial of constitutional rights. If the United States Supreme Court were to deny a hearing, the plaintiff would have no right to be heard by an independent tribunal. See *Barrows v. Jackson* (1952) 346 U. S. 249, 257.

G. *The Wisconsin Supreme Court Erred in Balancing What It Deemed To Be the Public Interest Against First Amendment Freedoms and Freedom of Association In the Absence of a Compelling Subordinating Reason.*

The heart of the decision in the Wisconsin Supreme Court is its holding that where regulatory measures are attacked as infringing First Amendment freedoms, the courts are required to balance the competing "public and private" interests at stake and that since the court has determined that it promotes the public interest to have public expression of the majority of the lawyers of the state with respect to legislation affecting the administration of justice and the practice of law, there is no interference with rights of free speech, assembly or petition. (R. 69-70, Ap. 11a-12a)

The Wisconsin Supreme Court, in making this statement, failed to observe the principle that in judging state action claimed to infringe rights of free association, the "*subordinating interest of the State must be compelling*" (emphasis added), in order to overcome individual constitutional rights at stake. *Barenblatt v. United States* (1959) 360 U. S. 109, 127; *Bates v. City of Little Rock* (1960) 361 U. S. 516, 523.

The court also overlooked the rule that freedom of speech, though not absolute, is protected unless shown that it is likely to produce a clear and present danger of substantive evil that arises far above public inconvenience, annoyance or unrest. *Terminiello v. Chicago* (1948) 337 U. S. 1, 4.

The court does not mention any compelling interest or clear and present danger which requires the court's enact-

ments. Indeed, it may be assumed that a majority of the members of the Court were unwilling to subscribe to the idea that there is a compelling subordinating interest which requires the enactment of rules which coerce attorneys to become members of a bar association.

The heavy burden of making a showing of such a subordinating compelling interest is upon those seeking to sustain the enactment. *Burstyn v. Wilson* (1951) 343 U. S. 495, 504.

The fact that an act is claimed to be in the public interest is not enough to sustain the burden. The aim of public peace, for example, cannot be accomplished by laws which deny rights protected by the Federal Constitution. *Buchanan v. Warley* (1917) 245 U. S. 60, 81. Mere legislative preference or beliefs respecting matters of public convenience is not sufficient. *Schneider v. Irvington* (1939) 308 U. S. 146, 161.

H. *Conclusion.*

The question involved here is of profound national and world-wide significance.

The question is substantial. Coercion of the state causing membership in and support of associations transgresses the most fundamental of the United States constitutional guarantees. It strikes at the heart of our republican form of government. It is in defiance of the "central idea" of the United States Constitution.

The United States Supreme Court has not passed upon the question here presented.

There is very little, if any, authority sustaining the lower court's decision. Indeed, the decision is in conflict with an earlier decision by the Wisconsin Supreme Court. What little authority there is in other states is divided.

The appellant has no opportunity for a hearing by an independent tribunal unless the United States Supreme Court grants a hearing.

The Wisconsin Supreme Court erred in weighing its determination of what is in the public interest against the rights of free association, speech, press, conscience, assembly and petition, in the absence of a subordinating interest compelling the court to do so.

It is respectfully requested that the Supreme Court of the United States take jurisdiction over this appeal.

Respectfully submitted,

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APPENDIX

59-79 OPINION OF THE SUPREME COURT OF THE STATE OF WISCONSIN

FILED APRIL 5, 1960
(Formal parts omitted)

59 APPEAL from a judgment of the circuit court for Fond du Lac county: RUSSELL E. HANSON, Circuit Judge. *Affirmed.*

Action commenced June 8, 1959, by Trayton L. Lathrop to recover the sum of $15 paid by him to the defendant Joseph D. Donohue under an alleged unconstitutional compulsion.

The material allegations of the complaint are as follows: The plaintiff was admitted to practice of law by the supreme court of Wisconsin in 1948 and since his admission he has practiced his profession at the city of Madison. The defendant is the treasurer of the State Bar of Wisconsin (hereinafter referred to as the "State Bar") which was integrated on a trial basis in 1956, by order of the supreme court of Wisconsin, and functions under the rules and
60 by-laws of such organization approved by further order of the same court. This integration of the bar was continued in effect on a permanent basis by further order of such court entered December 22, 1958. Such rules and by-laws impose compulsory membership and the payment of annual dues upon all persons admitted to practice law and engaged in the active practice of law in the state as a requisite of such persons continuing in such active practice. On or about March 6, 1959, the plaintiff paid under protest

to the defendant the sum of $15 to cover his annual dues to the State Bar for the calendar year 1959, and accompanied such payment with a letter which stated that such payment was made under compulsion of the by-laws of such organization requiring such payment, and that the plaintiff would hold the defendant personally liable for the amount so paid. The supreme court's order of December 22, 1958, insofar as it coerces the plaintiff to support the State Bar, is alleged to be unconstitutional on the ground that it violates the Fourteenth amendment of the United States constitution and art. I of the Wisconsin constitution.

The defendant demurred to the complaint on the following three grounds:

"1. The court lacks jurisdiction over the subject matter of the action in that exclusive jurisdiction thereof is vested in the Supreme Court of the State of Wisconsin.

"2. There is a defect of parties defendant in that the State Bar of Wisconsin is a necessary party.

"3. The complaint does not state facts sufficient to constitute a cause of action."

The trial court filed a memorandum decision in which the facts and the legal authorities were carefully and comprehensively considered, and determined that the demurrer must be sustained on all three grounds. An order
61 sustaining the demurrer was accordingly entered. Under date of October 23, 1959, judgment was rendered dismissing the complaint upon its merits. From such judgment the plaintiff has appealed.

62 CURRIE, J. This court has determined to consider the constitutional issue raised on its merits and not to dispose of the appeal upon procedural grounds.

While we are of the opinion that the learned trial court properly determined that the circuit court was without jurisdiction to pass upon the validity of an order of this court which regulates the practice of law, we will treat the action as though it had been originally and properly brought in this court. The reason for so doing is that this action is one *publici juris* in which we have had the benefit of most thorough and adequate briefs and oral argument upon the constitutional issue presented. Under such circumstances we deem it would work an injustice to dismiss the action and compel the plaintiff to commence a new proceeding in this court to relitigate the same issue.

The other procedural ground upon which the trial court sustained the demurrer to the complaint was that there was a defect of parties defendant. In so holding, the trial court determined that the State Bar is an indispensable party to this litigation under sec. 260.19 (1), Stats. However, we deem that there may be some merit to the plaintiff's contention that in order to rule that there is a defect in parties defendant it is necessary to decide the constitutional issue. This is because, if the orders of this court creating the State Bar an entity are void, then it has no standing which would require it to be made a party. We are satisfied that counsel for the defendant Donohue has so competently marshaled the facts and the law in support of the constitutionality of the orders creating the State Bar that its interests do not require that it be made a party.

63 Both the trial court and this court possess the power to have compelled, on the court's own motion, the im-

pleading of it as a party defendant, if its interests were deemed to require that this be done, as an alternative to dismissal of the action because of failure of the plaintiff to have joined it as a party.

The plaintiff bottoms his contention, that the integration of the bar is unconstitutional, upon the thesis that such integration violates the First amendment freedoms of free speech, press, assembly, and petition which are inherent in the due-process and equal-protection-of-the-laws clauses of the Fourteenth amendment. He also claims that there is a violation of these same freedoms as stated in various sections of art. I of the Wisconsin constitution. However, such provisions of the Wisconsin constitution are substantially the equivalent of the due-process and equal-protection-of-the-laws clauses of the Fourteenth amendment. *Boden v. Milwaukee* (1959), 8 Wis. (2d). 318, 324, 99 N. W. (2d) 156, and *Pauly v. Keebler* (1921), 175 Wis. 428, 185 N. W. 554. We are satisfied that if the orders creating and continuing the State Bar violate the provisions of art. I of the state constitution they also violate the Fourteenth amendment. We will, therefore, confine our consideration of the constitutional issue to whether there exists a violation of the Fourteenth amendment.

In *Integration of Bar Case* (1943), 244 Wis. 8, 11 N. W. (2d) 604, the argument was advanced that the statute enacted by the legislature (ch. 315, Laws of 1943), which provided for this court integrating the bar, violated the Fourteenth amendment. Mr. Chief Justice ROSENBERRY in his opinion for the court dealt with such argument at pages 41 to 44 thereof. It was there determined that an integration of the bar would not violate the Fourteenth amendment.

64 While we might ground our decision of the instant case on this sound precedent authored by one of the great chief justices of this court, we choose not to do so. This is because the plaintiff has advanced some arguments that were not presented to the court when it previously considered the constitutional issue in 1943.

The plaintiff commences his argument with the sound premise that the right of any person to belong to an association embodies certain First amendment freedoms protected by the Fourteenth amendment. As the United States supreme court recently declared in *Bates v. City of Little Rock* (1960), — U. S. —, 80 Sup. Ct. 412, 416, 4 L. Ed. (2d) 480, 485:

"And it is now beyond dispute that freedom of association for the purpose of advancing ideas and airing grievances is protected by the Due Process Clause of the Fourteenth Amendment from invasion of the States. *De Jonge v. Oregon*, 299 U. S. 353, 364, 57 S. Ct. 255, 259, 81 L. Ed. 278; *N. A. A. C. P. v. Alabama*, 357 U. S. 449, 460, 78 S. Ct. 1163, 1170, 2 L. Ed. (2d) 1488."

This court held to the same effect in *Lawson v. Housing Authority* (1955), 270 Wis. 269, 274, 70 N. W. (2d) 605.

From this premise the plaintiff argues that the converse is also true, i.e., the right not to belong to an association is also a freedom protected by the Fourteenth amendment. In support thereof he cites the following statement from the opinion of the Maine court in *Pappas v. Stacey*[1] (1955), 151 Me. 36, 116 Atl. (2d) 497, 500: "Freedom to associate of necessity means as well freedom not to associate. . . ."

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[1] In making such statement the Maine court was not referring to rights protected by the Fourteenth amendment, but was interpreting a state statute which provided, "Workers shall have full freedom of association . . ."

However, decisions of serious questions of constitutional law ought not to be grounded upon cliche.

The rules and by-laws of the State Bar, as approved by this court, do not compel the plaintiff to associate with anyone. He is free to attend or not attend its meetings
65 or vote in its elections as he chooses. The only compulsion to which he has been subjected by the integration of the bar is the payment of the annual dues of $15 per year. He is as free as he was before to voice his views on any subject in any manner he wishes, even though such views be diametrically opposed to a position taken by the State Bar.

The right to practice law is not a right but is a privilege subject to regulation. *Petition for Integration of the Bar of Minnesota* (1943), 216 Minn. 195, 12 N. W. (2d) 515, 518. As the Arizona court well stated in *In re Greer* (1938), 52 Ariz. 385, 81 Pac. (2d) 96, 98:

"The right to practice law is not a natural nor constitutional one, in the sense that the right to engage in the ordinary avocations of life, such as farming, the industrial trades and the mercantile business is. It has always been considered as a privilege only, bestowed upon certain persons primarily for the benefit of society, and upon such terms and conditions as the state may fix. The final determination as to what these conditions are, and who has satisfactorily complied therewith, is, and always has been, in the courts before which the individual practices his profession, and from time immemorial such individuals have been considered essentially and primarily as officers of the court admitting them."

The only limitation upon the state's power to regulate the privilege of the practice of law is that the regulations

adopted do not impose an unconstitutional burden or deny due process. *Schware v. Board of Examiners* (1957), 353 U. S. 232, 77 Sup. Ct. 752, 1 L. Ed. 796.

Mr. Chief Justice ROSENBERRY declared in the *Integration of Bar Case* (1943), *supra*, that the dues payable by a lawyer to an integrated bar imposed by state action are in the same category as an annual license fee imposed upon any occupation or profession which is subject to state regulation. This is also the holding of the Florida and Louisiana courts in *Petition of Florida State Bar Association* (Fla. 1949), 40 So. (2d) 902, and *In re Mundy* (1942), 202 La. 41, 11 So. (2d) 41. The fact that a license fee exact-
66 ed by the courts is not deposited in the public treasury but is disbursed by the court created agency to which paid, does not militate against the validity of such license fee. *Laughlin v. Clephane* (D. C. for Dist. Col. 1947), 77 Fed. Supp. 103.

The plaintiff grounds his argument, that the compulsory dues of the State Bar do impinge upon First amendment freedoms, on the fact that the State Bar does take a stand on legislation pending before the legislature. He points out that he personally is opposed to some of the legislation supported by it. Because of this he contends his rights guaranteed by the First amendment are violated because part of his dues money is used to support causes to which he is opposed.

Whatever activity in the legislative field in which the State Bar does engage is limited by its rules and by-laws promulgated by this court. Two of the standing committees which the board of governors is directed to establish by Rule .4 are the Committee on Administration of Justice and the Committee on Legislation. Secs. 4 and 9 respective-

ly of the by-laws define the duties of these two committees and read as follows:

"Section 4. *Committee on administration of justice.* This committee shall study the organization and operation of the Wisconsin judicial system and shall recommend from time to time appropriate changes in practice and procedure for improving the efficiency thereof; and in that connection shall examine all legislative proposals for changes in the judicial system.

"Section 9. *Committee on legislation.* This committee shall study all proposals submitted to the Wisconsin Legislature or the Congress of the United States for changes in the statutes relating to the courts or the practice of law, and shall report thereon to the board of governors; and with the approval of the board of governors may represent the State Bar in supporting or opposing any such proposals."

This court takes judicial notice of the activities of the State Bar in the legislative field since its creation by this court in 1956. In every instance the legislative measures
67 advocated or opposed have dealt with the administration of justice, court reform, and legal practice. Neither the above-quoted by-laws nor the stated purposes set forth in Rule 2 for which the bar was integrated would permit the State Bar to be engaged in legislative activities unrelated to these three subjects. The plaintiff complains that certain proposed legislation, upon which the State Bar has taken a stand, embody changes in substantive law, and points to the recently enacted Family Code. Among other things, such measure made many changes in divorce procedure, and, therefore, legal practice. We do not deem that the State Bar should be compelled to refrain from taking a stand on a measure which does substantially deal

with legal practice and the administration of justice merely because it also makes some ch. .ges in substantive law.

We are of the opinion that the public welfare will be promoted by securing and publicizing the composite judgment of the members of the bar of the state on measures directly affecting the administration of justice and the practice of law. The general public and the legislature are entitled to know how the profession as a whole stands on such type of proposed legislation. This is a function an integrated bar, which is as democratically governed and administered as the State Bar, can perform much more effectively than can a voluntary bar association. Cf. *Petition of Florida State Bar Ass'n., supra.*

The plaintiff contends that the State Bar's legislative activities are the same as those of such voluntary bar associations as the former Wisconsin Bar Association and the American Bar Association. Such argument ignores the obvious and very material distinction that exists between the legislative activities of the State Bar and those of
68 a voluntary association. A voluntary association is free to take a stand on any proposed legislation in any field it deems desirable. This is not true of the State Bar which must confine its activities in legislative matters to those authorized by the rules and by-laws promulgated by this court. Insofar as it confines such activities to those authorized by the rules and by-laws, this court will not interfere or in any manner seek to control or censor the action taken, or to substitute its judgment for that of the membership of the State Bar. This was made crystal clear in our opinion in *In re Integration of the Bar* (1958), 5 Wis. (2d) 618, 625-627, 93 N. W. (2d) 601. Any other course would be abhorrent to our sense of devotion to the ideal of a free

and independent bar. However, as we pointed out in our opinion in the 1958 *In re Integration of the Bar Case*, this court will exercise its inherent power to take remedial action should the State Bar engage in an activity not authorized by the rules and by-laws and not in keeping with the stated objectives for which it was created. If the lawyers of the state wish by group action to engage in legislative activities not so authorized they will have to do so within the framework of some voluntary association, and not the State Bar.

In the recent case of *Dulles v. Johnson* (2d Cir. 1959), 273 Fed. (2d) 362, the court had before it the question of whether bequests to certain New York bar associations were exempt from federal estate tax. While such associations were voluntary in character, their activities in legislative matters seem to have been similar in scope to those of
69 the State Bar of Wisconsin. The commissioner of internal revenue contended that the bequests were subject to tax because the associations were attempting to influence legislation and to carry on propaganda. However, the court ruled that the bequests were exempt and stated (p. 367):

"Moreover, the legislative recommendations of the Associations, insofar as these recommendations do not involve matters the responsibility for which has been entrusted to the Associations by the Legislature, are designed to improve court procedure or to clarify some technical matter of substantive law. They are not intended for the economic aggrandizement of a particular group or to promote some larger principle of governmental policy. These two factors lead us to the conclusion that the recommendations of the Associations concerning impending legislation are not such as to cause the forfeiture of charitable status under Section 812 (d)."

In other words, the court of appeals for the Second Circuit determined that these restricted legislative activities were in the public interest and did not destroy the exemption.

While the police power is generally considered an exclusive power of the legislature, it may be exercised by courts. *Petition of Florida State Bar Ass'n., supra.* In such cited case the court held that its exercise of inherent power to integrate the Florida bar constituted an exercise of the police power. We deem that the same is true of the 1956 and 1958 orders of this court integrating the bar of this state, and continuing the same, in order to improve the administration of justice. In situations where regulatory measures adopted by the states, or agencies thereof, pursuant to the police power, are attacked as infringing First amendment freedoms, the courts are required to balance the competing public and private interests at stake. *Barenblatt v. United States* (1958), 360 U. S. 109, 126, 79 Sup. Ct. 1081, 3 L. Ed. (2d) 1115; *National Asso. for Advancement of Colored People v. Alabama* (1958), 357 U. S. 449, 463, 466, 78 Sup. Ct. 1163, 2 L. Ed. (2d) 1488; and *Schneider v. Irvington* (1939), 308 U. S. 147, 161, 60 Sup. Ct. 146, 84 L. Ed. 155.

70 When we attempt to balance the competing interests at stake in this action we find no regulation of, or interference with, any of the plaintiff's rights of free speech, assembly, or petition. The only challenged interference with his liberty is the exaction of annual dues to the State Bar, in the nature of the imposition of an annual license fee, not unreasonable or unduly burdensome in amount, part of which is used to advocate causes to which he is opposed. However, this court in which is vested the power of the

state to regulate the practice of law, has determined that it promotes the public interest to have public expression of the views of a majority of the lawyers of the state, with respect to legislation affecting the administration of justice and the practice of law, the same to be voiced through their own democratically chosen representatives comprising the board of governors of the State Bar. The public interest so promoted far outweighs the slight inconvenience to the plaintiff resulting from his required payment of the annual dues.

Furthermore, the State Bar is a public and not a private agency. In the annotation entitled, "State bar created by act of legislature or rules of court; integrated bar," 114 A. L. R. 161, the author states:

"While the statutes or court rules under which they have been organized differ to some extent, integrated bars have the common characteristics of being organized by the state or under the direction of the state, and of being under its direct control, and in effect they are governmental bodies."

State Bar v. Superior Court (1929), 207 Cal. 323, 278 Pac. 432, 434, and *In re Gibson* (1931), 35 N. Mex. 540, 4 Pac. (2d) 643, 653, support the above-quoted statement.

In 1951 the Wisconsin legislature created the Judicial Council. Of the present sixteen members thereof, four
71 are chosen by the State Bar as a result of a secret ballot of its active members, three directly for such position, and the fourth ex officio because of having been elected president-elect of the organization. Such judicial council has been expressly authorized by the legislature to recommend to it "changes in the organization, jurisdiction, operation and methods of conducting the business of the courts."

Sec. 251.181 (2) (f), Stats. Thus it advocates adoption of legislation of the same category on which the State Bar voices a position. The council's activities are financed by an appropriation of the legislature and thus is supported out of the state's tax revenues. We are satisfied that the plaintiff as a taxpayer could not successfully challenge the constitutionality of the disbursement of public funds derived from taxes to support the activities of the judicial council merely because he was opposed to certain proposed legislation which it recommended be passed by the legislature. We can perceive no valid basis for distinguishing that situation from the one here confronting us insofar as constitutionality is concerned. The State Bar is a public agency the same as the Judicial Council. One has been created by the court and the other by the legislature but each was created by state action as a state agency to serve a public purpose.

While the plaintiff does not challenge the constitutionality of the purposes, other than legislative, for which the State Bar expends the annual dues collected from its members, we deem it advisable to set forth in an appendix to this opinion an analysis of such activities and the public purpose served thereby. Such analysis is not based upon the allegations of the complaint but upon facts of which this court takes judicial notice.

A considerable portion of plaintiff's brief is devoted to an impassioned argument that the integration of the bar is but the initial step which will lead to fascist syndicalism of the type rampant in Italy during Mussolini's years
72 of power. As plaintiff points out, the chief evils of such a system was that the syndicates usurped and exercised the powers which in a democracy would be exercised

by parliament and the courts, with resulting curtailment of the liberties of the people. That integration will lead to fascist syndicalism is an argument addressed to the policy making functions of the court, which would be material on the issue of whether or not to direct that the bar be integrated, but is hardly pertinent with respect to the issue of constitutionality. It is the constitutional issue alone with which we are here concerned.

Some of the states which have had long years of experience with an integrated bar, and the years in which such integration was accomplished are:

North Dakota	1921
California	1927
South Dakota	1931
Washington	1933
Missouri	1934

If bar integration were to lead to syndicalism one would think that some start in this direction at least would be discernible by now after the lapse of a period in excess of twenty-five years that these five states have had integrated bars. The fact that no such trend has occurred after such long experience with an integrated bar is to us convincing proof of the groundless nature of plaintiff's fears.

Mr. Justice HOLMES, in his famous dissent in *Panhandle Oil Co. v. Knox* (1928), 277 U. S. 218, 223, 48 Sup. Ct. 451, 72 L. Ed. 857, after referring to Chief Justice MARSHALL'S often quoted dictum that the power to tax is the power to destroy, declared, "The power to tax is not the power to destroy while this court sits." This prompts us to observe that any usurpation on the part of the State Bar of the powers of either the legislature or the courts will not occur so long as this court sits. Without such usurpa-

tion of legislative or judicial power there can be no fascist syndicalism.

It is our considered judgment that the orders of this court integrating the bar, and continuing such integration, violate none of the First amendment freedoms of the plaintiff as embodied in the due-process and equal-protection-of-the-laws clauses of the Fourteenth amendment.

While we have considered and resolved the constitutional issue as if this were a proceeding originally brought in this court, our mandate also will affirm the judgment below.

By the Court.—The order of this court of December 7, 1956, which promulgated the rules and by-laws of the State Bar of Wisconsin effective for a two year period, and the further order of this court of December 22, 1958, which continued the State Bar of Wisconsin on a permanent basis, do not violate the Fourteenth amendment to the United States constitution and are constitutional. The judgment appealed from is affirmed.

APPENDIX

74 *Major Activities of State Bar of Wisconsin*

Post-Graduate Education of Lawyers.

The most extensive activities of the State Bar are those directed toward post-graduate education of lawyers. There is a great need for this because of the rapid changes and new developments that have occurred in the field of law subsequent to the admission to practice of a large percentage of the lawyers of the state. This trend shows no signs of abating. In order that lawyers be qualified to properly represent clients such post-graduate education is essential.

The State Bar provides such post-graduate education through its annual and separate mid-winter meetings, its regional meetings, its annual tax school, and its publication of the Wisconsin Bar Bulletin. The annual and the mid-winter meetings of the State Bar are each of at least two days' duration and are largely devoted to the delivery of papers on technical legal subjects of an instructive nature. The same is true of the one-day regional meetings annually held throughout the state. At the annual two-day tax school the papers delivered are confined to the fields of taxation. Many of these papers delivered at these various meetings are later published in the Wisconsin Bar Bulletin so that they will be available for instant reference by all members of the bar of the state. Each member of the State Bar receives a copy of the Wisconsin Bar Bulletin by mail as issued, it being published bi-monthly.

Post-graduate education of lawyers is in the public interest because it promotes the competency of law-
75 yers to handle the legal matters entrusted to them by those of the general public who employ them.

Public Relations.

The field of endeavor carried on under the name of "public relations" would better be termed "public service." The chief activity carried on in this field by the State Bar is the preparation, publication, and distribution to the general public of pamphlets dealing with various transactions and happenings with which laymen are frequently confronted, which embody legal problems. Alternative courses of action are sometimes set forth and the advantages and disadvantages of each explained. Where there is danger that a layman might be likely to overlook some positive requirement of the law, such requirements are pointed out. Among the titles of such pamphlets are: "It May be Your Turn Next—What to do in Case of an Auto Accident;" "Have You Made a Will;" "Sound Steps in Purchasing a Home;" and "Joint Tenancy—Boon or Boomerang." Banks and trust companies, local bar associations, and others purchase these pamphlets from the State Bar at slight advance above the cost of publication in order to cover boxing and mailing expense. The statement of receipts and disbursements of the State Bar for the calendar year of 1959 shows receipts of $2,748.27 from the sale of pamphlets which receipts should be credited against a total expenditure for "Public Relations" of $2,743.55.

Another activity of the State Bar in this field consists of preparation of informative articles on legal subjects which are offered for publication to the newspapers throughout the state, and are published under the heading of "The Law and You."

76 A further public relations activity is the preparation and distribution of news releases covering the ac-

tivities of the State Bar, such, for example, as the observance throughout the state of "Law Day, U. S. A."

Discouraging Unauthorized Practice of the Law.

One of the standing committees of the State Bar is that of Unauthorized Practice of Law. The primary purpose of such committee is to protect the public from incompetent layment attempting to offer or perform legal services which they are not competent to render. This is a constant program since numerous trades and occupations keep expanding their services and frequently start offering services which constitute the practice of the law. As a result of integration the income from dues has enabled the State Bar to employ an additional lawyer on its staff whose major assignment is to investigate complaints made with respect to instances of unauthorized practice of the law, and to cause any unauthorized practices so discovered to be discontinued through persuasion or legal action.

Establishment of a Minimum Fee Schedule.

The State Bar recently adopted a recommended minimum fee schedule covering legal services. The present economic plight of the lawyers in this country is one which has disturbed the bench and the bar. Able young men who otherwise might be attracted to entering the legal profession are being discouraged not to because of this. Lawyers already in the profession because of insufficient incomes are caused to forsake the practice of law for more financially attractive fields of endeavor. According to statistics gathered by the Economics of Law Practice Committee of the American Bar Association during the period of 1929 to 1951

the net income of lawyers increased but 58 per cent, while for the same period that of dentists rose 83 per cent
77 and that of physicians 157 per cent. During the same period the net income of employees of all industry increased 131 per cent. During 1954 the net income before taxes of one-third of all practicing lawyers of the nation was less than $5,485.

The quality of legal service which will be rendered to the public is likely to suffer if young men of ability are dissuaded from entering the profession because of the difficulty of securing an adequate financial reward to enable them to properly support themselves and their families. A minimum fee schedule which realistically recommends charges for legal services that are in keeping with the increased cost of living that has taken place since World War II, should have a tendency toward remedying this condition. Such a schedule also serves a further public purpose because it provides a guide for the basing of legal charges that tends to prevent overcharges as well as undercharges. Lawyers, who are true to their oath of admission, recognize that adoption of a recommended minimum fee schedule does not relieve them from the duty of serving the poor without compensation, or of reducing the charge if the normal charge would be unduly burdensome to a client of limited means. Furthermore, a lawyer's charge for services, even when based upon the recommended schedule, is always subject to the court's determination of reasonableness.

Legal Aid.

Another of the standing committees of the State Bar is the Legal Aid Committee. This committee has done effective and noteworthy work to encourage the local bar associations of the state to set up legal aid systems in their local communities under which legal services are rendered without charge to the indigent in the need of the same. Such committee has also outlined recommended procedures for establishing and carrying through such systems of providing legal aid.

78 *Investigation and Adjustment of Grievances.*

The State Bar has created grievance committees for each of the nine districts into which the state has been divided for election purposes. These districts coincide with the Congressional districts of the state except for combining the two Congressional districts of Milwaukee county into one district. While the supreme court has delegated none of its power to punish disciplinary infractions, these State Bar grievance committees perform a valuable function in investigating and adjusting grievances filed against lawyers of the district in which the particular grievance committee functions. Prior to integration of the bar most of such grievances were investigated by the paid counsel of the Board of State Bar Commissioners, and the cost thereof was defrayed from the general tax revenues of the state. Since integration most of such work of investigation of grievances has been done by the grievance committees of the State Bar. As a result there has been a saving to the general taxpayers of the state. One evidence of this is that the Board of State Bar Commissioners is requesting a de-

crease in its appropriation from the state of $800 less for the coming biennium than was appropriated in the present biennium.

Legislative Activities.

In addition to the legislative activities of the State Bar to which the plaintiff objected, and which are discussed in the opinion, the State Bar performs the further function of promptly publicizing to the lawyers of the state pending and adopted legislation affecting legal practice.

Acts lengthy in scope, such as the Family Code and the
79 Act Extending the Jurisdiction of the Courts Over Non-Resident Persons and Corporations, are analyzed and explained by articles published in the Wisconsin Bar Bulletin. Such activities enable the lawyers to better serve their clients.

58 JUDGMENT OF SUPREME COURT
OF WISCONSIN ENTERED APRIL 5, 1960
(Formal parts omitted)

58 This cause came on to be heard on appeal from the judgment of the Circuit Court of Fond du Lac County and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court, that the order of this Court of December 7, 1956, which promulgated the rules and by-laws of the State Bar of Wisconsin effective for a two year period, and the further order of this Court of December 22, 1958, which continued the State Bar of Wisconsin on a permanent basis, do not violate the Fourteenth amendment to the United States

constitution and are constitutional. The judgment of the Circuit Court of Fond du Lac County, appealed from in this cause, be, and the same is hereby, affirmed with costs against the said appellant taxed at the sum of One Hundred Twenty-five Dollars and No Cents ($125.00).

Justice Hallows took no part.

39-51 OPINION OF RUSSELL E. HANSON
JUDGE OF CIRCUIT COURT FOR
FOND DU LAC COUNTY, WISCONSIN
DATED OCTOBER 23, 1959
(Formal parts omitted).

39 Briefly, the complaint of the plaintiff alleges that he is duly licensed by the State of Wisconsin to practice law as a lawyer and that he has been so engaged since 1948. That on March 6, 1959, he paid to the defendant, by certified check payable to the order of the defendant, the sum of $15.00; and that at the time of the delivery of the check he informed the defendant, in a letter which accompanied the check, that the check was sent under compulsion of Sections 2 and 3 of Article 1 of the By-laws of the State Bar of Wisconsin, and under protest, and that he would hold the defendant personally liable for that amount. A copy of the letter is attached to the complaint. That the defendant cashed the check and commingled the $15.00 with the funds of the State Bar of Wisconsin, the defendant being at that time Treasurer of the State Bar of Wisconsin. That the sum of $15.00 constituted dues which the plaintiff was required to pay to the State Bar of Wisconsin annually in order to be permitted to practice law, and that

said payment was made under coercion and against his free will.

The complaint further alleges that the State Bar of Wisconsin has used its employees, property and funds in active unsolicited opposition to the adoption of legislation by the Legislature of Wisconsin which was favored by the plaintiff.

The complaint further alleges that the State Bar of Wisconsin has also been engaged in the promotion of matters contrary to its fundamental purposes. The last paragraph of the complaint reads as follows:

40 "The plaintiff bases this action on his chaim that the defendant has unjustly received, held, and disposed of funds of the plaintiff in the amount of $15.00, which to the knowledge of the defendant were paid to the defendant by the plaintiff unwillingly and under coercion, and that such coercion was and is entailed in the rules and by-laws of the State Bar of Wisconsin continued in effect by the aforesaid order of the Supreme Court of Wisconsin dated December 22, 1958; and the said order, insofar as it coerces the plaintiff to support the State Bar of Wisconsin is unconstitutional and in violation of the Fourteen. Amendment of the Constitution of the United States, and Sections 1, 3, 4, 18 and 22 of Article 1 of the Constitution of the State of Wisconsin."

The addendum clause then prays for judgment against the defendant in the amount of $15.00, plus interest from March 31, 1959, together with his costs and disbursements; and that the plaintiff have such other relief as may be just.

The defendant demurs to the complaint on the ground that it appears on the face thereof that:

1. The Court lacks jurisdiction over the subject matter of the action in that exclusive jurisdiction thereof is vested in the Supreme Court of the State of Wisconsin.

2. There is a defect of parties defendant in that the State Bar of Wisconsin is a necessary party.

3. The complaint does not state facts sufficient to constitute a cause of action.

It is not clear from the complaint as to whether the plaintiff is basing his claim for the refund of the $15.00 dues paid to the State Bar of Wisconsin by virtue of the fact that he alleges that said payment was made under coercion as a result of his contention that the State Bar was engaged in activities contrary to the rules of the Supreme Court, or whether it is limited to a rule which provides that a lawyer must pay annual dues of $15.00 in order to be properly licensed to practice law in the State of Wisconsin. For the purpose of ruling on the demurrer, the complaint must be liberally construed; and for that reason the Court is
41 construing the complaint to mean that the plaintiff seeks a refund of the sum of $15.00 he paid as dues under a contention that he was coerced into paying said dues by the State Bar of Wisconsin while the State of Wisconsin was engaged in the performance of functions contrary to the rules and regulations as promulgated by the Supreme Court of Wisconsin; and that he was likewise coerced into paying the $15.00 dues by virtue of a rule promulgated by the Supreme Court of Wisconsin which provides that, in order to practice law in the State of Wisconsin, annual dues in the sum of $15.00 must be paid to the State Bar of Wisconsin; and that as a result the rules so promulgated by the Supreme Court of Wisconsin in "In re: Integration of Bar, 273 Wis. 281," and State Bar rules and State Bar by-laws

set forth in 273 Wis. xi through xxxvii, or certain of the provisions therein, are null and void as being in violation of constitutional provisions of either the State of Wisconsin or the United States of America. (The Supreme Court of Wisconsin in "In re: Integration of Bar, 5 Wis. (2d) 618," on Dec. 22, 1958, order as follows: "It is ordered that the State Bar of Wisconsin be and it is hereby continued." By ordering the continuation of the State Bar of Wisconsin, the Supreme Court ordered that the State Bar rules and the State Bar by-laws (supra) be continued in effect indefinitely.)

Section 256.31 of the Statutes was adopted by the Legislature in the year 1943, being known as Chapter 315 of the Laws of 1943, and reads as follows:

> "State bar of Wisconsin. (1) There shall be an association to be known as the 'State Bar of Wisconsin' composed of persons licensed to practice law in this state, and membership in such association shall be a condition precedent to the right to practice law in Wisconsin.
>
> "(2) The supreme court by appropriate orders shall provide for the organization and government of the association and shall define the rights, obligations
> 42 and conditions of membership therein to the end that such association shall promote the public interest by maintaining high standards of conduct in the legal profession and by aiding in the efficient administration of justice."

In Integration of Bar Case: In re Constitutionality of Chapter 315 Laws of 1943, 244 Wis. 8, the Court held as follows:

"Ch. 315, Laws of 1943, creating sec. 256.31, Stats., directing the supreme court to provide by appropriate orders for the organization and government of a state bar association, and providing that all persons licensed to practice law shall be members as a condition precedent to the right to practice law in this state, is not unconstitutional as delegating legislative power to the court, nor as denying to members of the bar the equal protection of the laws guaranteed by the Fourteenth amendment, nor as denying to them the benefit of federal statutes relating to the practice of law in the federal courts.

"The integration of the bar is a judicial and not a legislative function, and the power to integrate the bar resides in the judicial and not in the legislative branch of the state government. The supreme court is not precluded from exercising the power of integrating the bar by the provision in sec. 3, art. VII, Const., conferring only appellate jurisdiction on that court.

"So far as the integration of the bar involves matters affecting the general welfare, the legislature in the exercise of its powers may act subject to review by the court to determine whether the administration of justice is embarrassed or the constitutional power of the court is invaded.

"The court will not treat ch. 315, Laws of 1943, as merely a memorial invoking the power of the court to integrate the bar, nor will the court regard the act as an attempt by the legislature to invade the province of the court or to dictate to it, but the court will regard the act as a legislative declaration that the integration of the bar will promote the general welfare.

"In view of the fact that so many members of the bar are in the military and naval service or otherwise engaged in promting the war effort, the matter of in-

tegration will not be proceeded with at the present time."

In In re Integration of the Bar, 249 Wis. 523, the Court held as follows:

"The justification for integrating the bar and compelling the payment of fees, which are the lifeblood of an integrated bar, would be that the supreme court has inherent power to control and regulate its bar as officers of the court, and that this power may be implemented by dues from the members of the bar which serve in a measure the function of license fees, but which are not such in a legal sense, in that they are not paid into the treasury of the state.

43 "In case of integration of the bar by the supreme court pursuant to ch. 315, Laws of 1943, sec. 256.31, Stats., annual fees required by the members of the bar in support of the integrated bar would be moneys required to be paid into the treasury of the bar for a public purpose connected with the administration of justice."

On Page 527 the Court said:

"In the original opinion we expressly reserved the question whether this court could require members of the bar to pay dues in support of an integrated bar. A consideration of this question is necessarily inseparable from a consideration of the question whether the court should integrate the bar, because the fees are the lifeblood of the integrated bar, and to integrate the bar without fees would be useless. Such cases as we have examined, passing upon his point, hold that the court may require payment of dues. A. C. Brydonjack v. State Bar of California, 208 Cal. 439, 281 Pac. 1018, 66 A. L. R. 1507; In re Gibson, 35 N. M. 550, 4 Pac.

(2d) 643; State Bar of Oklahoma v. McGhee, 148 Okla. 219, 298 Pac. 580; Kelley v. State Bar of Oklahoma, 148 Okla. 282, 298 Pac. 623; Petition for Integration of Bar of Minnesota, 216 Minn. 195, 12 N. W. (2d) 515; In re Scott, 53 Nev. 24, 292 Pac. 291. All of them very briefly justify the fees as an occupational license. This analogy cannot be pressed too far, although it has some vitality, because the license of occupations is clearly a legislative function. Further than this, license money should properly go into the treasury of the state and be appropriated. It must be appropriated for a public purpose, it requires a strict limiting of purposes of the integrated bar, and it raises embarrassing problems of auditing.

"The justification for integrating the bar and compelling payment of fees is not that suggested by the cases above cited. It is rather that the court has inherent power to control and regulate its bar as officers of the court, and that this power may be implemented by dues from the members which serve in a measure the function of license fees, but which are not such in a legal sense. In other words, the court by reason of its inherent or implied powers may, if it thinks the exigencies call for it, require the bar to act as a unit, to promote high standards of practice and the economical and speedy enforcement of legal rights, and to implement this may require the bar to make such contributions in money to the joint effort as is deemed necessary and proper. No matter what these fees be called, they are moneys required to be paid into the treasury of the bar for a public purpose connected with the administration of justice."

In In Re Integration of the Bar, 273 Wis. 281, on Page 283 the Court held as follows:

"This is the third time that this matter has received the attention of this court. See Integration of Bar Case, 244 Wis. 8, 11 N. W. (2d) 604, 12 N .W. (2d) 44 699, and in re Integration of Bar, 249 Wis. 523, 25 N. W. (2d) 500. In those decisions legal and constitutional questions involving the enactment of ch. 315, Laws of 1943, now sec. 256.31, Stats., were considered and answered. It was held that said statutory provision is not binding upon the court but was an expression of public policy by the legislature. It was held that this court, by reason of its inherent powers, may require the bar to act as a unit to promote high standards of practice and the economical and speedy enforcement of legal rights.

"In the first decision it was held that the bar should not be integrated while so many attorneys were engaged in the war effort. In the second decision it was intimated that the objectives sought to be obtained by integration could be attained by an adequately supported voluntary association, and the court advocated complete and wholehearted support of the voluntary association by the individual members of the bar. Many individual members of the bar did respond to that suggestion, but it is now reported that too many lawyers have refrained or refused to join, that membership in the voluntary association has become static, and that a substantial minority of the lawyers in the state are not associated with the State Bar Association.

"Able attorneys presented arguments both for and against the granting of the petition. Apparently the same arguments have been made in other states. 114 A. L. R. 151; 151 A. L. R. 586; and Petition of Florida

State Bar Asso. 40 So. (2d) 902. It is unnecessary to repeat the arguments here.

"Twenty-four states now have integrated bars. Some have been integrated in response to legislation such as we have in this state and some under the inherent power of the high courts of the various states."

The Supreme Court then ordered the State Bar of Wisconsin to be integrated when proper rules and procedures had been adopted by further order of the Court. It was as a result of this order that the Supreme Court promulgated the State Bar Rules and the State Bar By-laws (supra), the Court having ordered that these rules and by-laws be in effect for a period of two years.

In In Re Integration of the Bar, December 22, 1958, 5 Wis. (2d) 618, the Court said, at Page 620:

"The history of integration is adequately set forth in the previous decisions of this court. Integration of Bar Case (1943), 244 Wis. 8, 11 N. W. (2d) 604; In re Integration of Bar (1946), 249 Wis. 523, 25 N. W. (2d) 500; In re Integration of Bar (1956), 273 Wis. 281, 45 77 N. W. (2d) 602. The present rules and by-laws of the State Bar of Wisconsin were adopted and promulgated and the bar integrated by order of this court on December 7, 1956, to be effective for two years commencing January 1, 1957, subject to amendment as provided in the rules and by-laws or at any time by order of this court. See Integration of the Bar (1956) 273 Wis. p. vii. (Order, Opinion, State Bar Rules, and State Bar By-laws)."

The Court further said, on Pages 622-623:

"We must reiterate, the primary duty of the courts as the judicial branch of our government is the proper

and efficient administration of justice. Members of the legal profession by their admission to the bar become an important part of that process and this relationship is characterized by the statement that members of the bar are officers of the court. An independent, active, and intelligent bar is necessary to the efficient administration of justice by the courts. The labor of the courts is lightened, the competency of their personnel and the scholarship of their decisions are increased by the ability and the learning of the bar. The practice of the law in the broad sense, both in and out of the courts, is such a necessary part of and is so inexorably connected with the exercise of the judicial power that this court should continue to exercise its supervisory control of the practice of the law.

"The integration of the bar is no more undemocratic than the requirement of learning and good moral character of all who seek the privilege of practicing law. All members had the same opportunity and have freely chosen a profession subject traditionally to discipline and control by the courts. It is not undemocratic to require those who are privileged to practice law and are intrusted with the duty to secure or protect the property, rights, and liberties of others to become bound together in a united effort to increase their own capabilities, to maintain the high standards of the group, and to increase the effectiveness of their service to the public. The integrated bar has been defined as 'the process by which every member of the bar is given an opportunity to do his share in carrying out the public service of the bar and obliged to bear his portion of the responsibility.' Most objections have centered around the obligation to bear a portion of the responsibility. In the nature of things every privilege has a correlative obligation.

"The integrated bar does not destroy either the independence of the bar or of the individual lawyers. The State Bar of Wisconsin was not intended to control and there is no evidence or intimation that it has controlled or attempted to control the thinking of any of its members. When the State Bar of Wisconsin through its board of governors, an elected representative policy-making body, duly decides a policy within its province on behalf of the State Bar everyone understands or should understand the policy is that of the State Bar as an entity separate and distinct from each
46 individual. Such pronouncement of the State Bar does not necessarily mean all of its members agree with that pronouncement, nor is it necessary for them to do so. Individual members are free to think and to express their own opinions. But it is the nature of a representative democratic organization that the elected representatives of the group speak and act for it in accordance with its organic laws.

"The rules of the State Bar of Wisconsin are rules promulgated by this court."

The Court further said, on Pages 624-625:

"The other rules deal with the conditions of membership, the officers, the board of directors, and the executive committee. Democratic procedure is provided for membership meetings and for membership referendum. Rule 10 provides for grievance committees and procedures for the investigation of grievances, for the protection of the members of the bar, and for the protection of the public. The integrated bar has no power to discipline or to bisbar any member. That power has been reserved to and not delegated by this court. The procedure under sec. 256.28, Stats., for filing complaints for discipline or disbarment in this court is unaffected by these rules. Rule 11 and Rule 7 pro-

vide an orderly and easy method by which proposals to amend or abrogate the rules of the State Bar may be brought before this court for hearing on petition. Rule 9 provides the rules of professional conduct set forth from time to time in the canons of professional ethics of the American Bar Association, as supplemented or modified by pronouncement of this court, shall be the standard governing the practice of law in this state. Prior to the adoption of the rules this court had not expressly adopted such Canons of Professional Ethics in toto.

"The by-laws of the State Bar provide for the internal workings of the organization and by Rule 11, sec. 2, may be amended or abrogated by resolution adopted by a vote of two thirds of the members of the board of governors or by the members of the association themselves through the referendum procedure. As a further protection to the minority a petition for review of any change in the by-laws made by the board of governors will be entertained by the court if signed by 25 or more active members.

"Independently of the provisions in the rules for invoking our supervisory jurisdiction, this court has inherent power to take remedial action, on a sufficient showing that the activities or policies of the State Bar are not in harmony with the objectives for which integration was ordered or are otherwise contrary to the public interest."

A rule promulgated by the Supreme Court of Wisconsin is as effective as a law passed by the Legislature, and in effect is a law of the State. The Supreme Court has exclusive supervisory jurisdiction of the State Bar of Wisconsin. If the rules as now promulgated are such that they permit the State Bar of Wisconsin to engage in ac-

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tivities which are not in agreement with the views of the plaintiff, the plaintiff may seek a remedy by following the remedial provisions as contained in the rules, and the Supreme Court of Wisconsin has exclusive jurisdiction to determine whether or not the State Bar of Wisconsin is violating the rules or whether the rules should be amended. The Circuit Court has no jurisdiction to determine these questions.

Section 5 of Rule 2 of the State Bar Rules provides that every active member shall pay membership dues in such amount, not exceeding $20.00 per year, as may be fixed in the By-laws. Section 3 of the State Bar By-laws provides that a member shall be suspended for non-payment of dues. It also provides that no person whose membership is suspended for the non-payment of dues shall be entitled to practice law during the period of such suspension. By rule of the Supreme Court of Wisconsin it is the declared law of this State that in the event a lawyer fails to pay the dues as provided by law, he may be suspended and, as a result of being suspended, is not permitted to practice law in this State. The rules further provide for a method of petitioning the Supreme Court of Wisconsin requesting that the rule be changed. The Circuit Court has no jurisdiction with reference to the rules herein involved. The plaintiff contends that the Circuit Court has jurisdiction by virtue of the fact that this is a suit for the collection of money. However, the subject matter of this litigation involves rules promulgated by the Supreme Court of Wisconsin, and the Supreme Court has exclusive jurisdiction with reference to the questions involved.

48 It is therefore the considered opinion of this Court that the Supreme Court of Wisconsin has exclusive

jurisdiction of the subject matter contained in the complaint of the plaintiff.

Assuming that this Court did have jurisdiction of the subject matter of the complaint, then is there a defect of parties defendant in that the State Bar of Wisconsin is a necessary party? The defendant Donohue is a practicing attorney and, at the time of the service of the complaint on June 8, 1959, was treasurer of the State Bar of Wisconsin. This Court takes judicial note of the rules of the State Bar of Wisconsin which provide for the election of officers and, by virtue of these rules, recognizes that the defendant is no longer treasurer of the State Bar. The Court also takes judicial note of the rules which provide that all funds must be disbursed in accordance with the orders of the Board of Governors of the Bar. The complaint recognizes that the sum of $15.00 paid to the defendant was turned over and went into the treasury of the State Bar and that the real owner of the funds is the State Bar. Rule 1 of the State Bar Rules provides:

> "The State Bar may, for the purpose of carrying out the purposes for which it is organized, sue and be sued, enter into contracts, acquire, hold, encumber and dispose of real and personal property."

If the plaintiff can recover from the defendant on the ground that the State Bar Rules are invalid, as alleged, then the rights of the State Bar and its various assistants are in jeopardy in a lawsuit to which it is not a party. In indispensable party to a lawsuit can be defined as follows:

> "An indispensable party is one who has such an interest in the subject matter of the controversy that a final decree cannot be rendered between the other

parties to the suit without radically and injuriously affecting his interest or without leaving the controversy in such a situation that its final determination may be inconsistent with equity and good conscience."

Silver King Coalition Mines Co. vs. Silver King C. M. Co., 204 Fed. 166, quoted with approval in McCoy vs. May, 255 Wis. 20.

49 It is the opinion of this Court that the State Bar of Wisconsin is an indispensable party to this litigation and that its interest in the subject matter of the controversy is such as that is should be required, for its own protection, to be brought in as a party defendant. (Section 260.19 (1) Wisconsin Statutes.)

Assuming that this Court did have jurisdiction of the subject matter of the complaint, then does the complaint state facts sufficient to constitute a cause of action? It is the contention of the plaintiff that the rules under which the State Bar operates, and particularly the rule requiring a lawyer to pay annual dues of $15.00, violate the provisions of the Constitution of Wisconsin and also the provisions of the Constitution of the United States.

Independently of the rules which create and govern the State Bar, the Supreme Court has exclusive supervisory jurisdiction over the State Bar by virtue of its inherent power to take remedial action on a sufficient showing that the activities or policies of the State Bar are not in harmony with the objectives for which integration was ordered, or are otherwise contrary to the public interest. The Circuit Court has no such jurisdiction.

The power and authority to grant a permit to an individual, authorizing the individual to practice law, rests

exclusively in the Supreme Court. The power to control the activities of the lawyers and supervise, reprimand, suspend or disbar a lawyer likewise rests exclusively in the Supreme Court. The Supreme Court, in creating the Integrated Bar, (State Bar of Wisconsin) did not relinquish those rights or powers. The Supreme Court also retained the right and power to supervise, regulate and control the Integrated Bar (State Bar of Wisconsin).

If, when a person is granted permission to pracitce law,
50 he gets that permission as a matter of right, then a serious question would arise as to whether he could be required to pay annual dues in order to be in good standing. It is the considered judgment of this Court that no individual can demand a permit to practice law as a matter of right. In securing permission to practice law, an individual secures the permission by virtue of a privilege. A privilege is not a right. If it is a requirement that the individual pay annual dues in order that the individual may continue to exercise the privilege of practicing law, he is not being deprived of any right under either the Constitution of the State of Wisconsin or under the Constitution of the United States.

The Supreme Court has dealt with the question of the Integrated Bar on at least four occasions, (decisions supra) not only by its decisions but by its acts in ordering the integration of the Bar. (In so doing, creating the State Bar of Wisconsin). Under the rules of the Supreme Court it has effectually declared that all of its rules and regulations are of such a nature that they do not violate any of the provisions of either the Constitution of the State of Wisconsin or of the Constitution of the United States.

This Court concludes that the rules and regulations of the State Bar of Wisconsin, which have been promulgated

by the Supreme Court of Wisconsin, do not violate any of the provisions of the Constitution of the State of Wisconsin or of the Constitution of the United States.

It is unnecesary to treat with the question of whether or not the payment by the plaintiff is to be considered as a payment under protest, or a voluntary payment.

Due consideration has also been given to various other contentions raised by the respective parties, and it is considered that it is unnecessary to discuss them in order to reach a decision.

51 In 5 Wis. (2d) 618 (December 22, 1958) the Court said:

> "* * * It is not undemocratic to require those who are privileged to practice law and are intrusted with the duty to secure to protect the property, rights, and liberties of others to become bound together in a united effort to increase their own capabilities, to maintain the high standards of the group, and to increase the effectiveness of their service to the public. The integrated bar has been defined as 'the process by which every member of the bar is given an opportunity to do his share in carrying out the public service of the bar and obliged to bear his portion of the responsibility.' * * * *."

It is therefore concluded that the complaint fails to state facts sufficient to constitute a cause of action.

Assuming that this Court did have jurisdiction over the subject matter of the complaint, and assuming that the State Bar of Wisconsin was made an additional party defendant, it would then be the considered judgment of this Court that it would be impossible to frame a complaint so as to state facts sufficient to constitute a cause of action

against either the State Bar of Wisconsin or the defendant Donohue (in the Circuit Court).

In Pedrick vs. First National Bank of Ripon, 267 Wis. 436, it is held:

> "Where it appears that a sufficient complaint cannot be framed, the trial court, on sustaining a demurrer, may in its discretion deny to the plaintiff the opportunity to plead over."

It follows that the demurrer of the defendant must be sustained; and that the Court should exercise its discretion and deny to the plaintiff the right to plead over.

Counsel for the defendant is hereby directed to prepare for the Court's signature an order sustaining the demurrer of the defendant, dismissing the complaint of the plaintiff, and denying the plaintiff the right to plead over. The order shall further provide that the defendant recover from the plaintiff the sum of $15.00 costs.

54-55 JUDGMENT OF THE CIRCUIT COURT
FOR FOND DU LAC COUNTY, WISCONSIN
ENTERED OCTOBER 23, 1959
(Formal parts omitted)

54 This action having come on for hearing before the Court on September 3, 1959 upon the demurrer of the defendant to the complaint of the plaintiff herein; and the Court having on October 9, 1959 rendered its decision and written opinion upon said demurrer; and the Court having, by an order made and entered on October 23, 1959, sustained said demurrer, denied leave to the plaintiff to plead over, and directed judgment to be entered dismissing the

plaintiff's complaint upon its merits with costs of Fifteen ($15.00) Dollars for the defendant;

NOW, THEREFORE, upon motion of Gordon Sinykin of counsel for the defendant,

IT IS ORDERED AND ADJUDGED that the complaint of the plaintiff herein be and the same hereby is dismissed upon its merits, and that the defendant, Joseph D. Donohue, have and recover from the plaintiff, Trayton L. Lathrop, costs in the sum of Fifteen ($15.00) Dollars.

VETO MESSAGE OF ACTING GOVERNOR WALTER S. GOODLAND

April 16, 1943

To the Honorable, the Senate:

I return herewith Bill No. 56, S. without any approval.

This bill proposes the creation of an association to be known as the "State Bar of Wisconsin" composed of persons licensed to practice law in this state, and expressly provides that membership in such association shall be a condition precedent to the right to practice law in Wisconsin.

The proposal of compulsory membership in any organization is contrary to Wisconsin legislative tradition. It is opposed to our conception of democracy and individual initiative. If enacted into law, this measure would establish a precedent that would offer opportunity for future encroachment. It would encourage similar legislation as to compulsory membership in other professional, business and trade associations.

I believe thoroughly and wholeheartedly in cooperation, but not in coercion, in conducting human affairs and

relations. This bill is founded on force and compulsion and creates a monopoly. I am convinced that the people of this state still believe in the honored tradition and principle of self-determination. This bill forbids that. It is a step farther toward regimentation of the people.

Wisconsin courts have a high reputation in the administration of justice. The Wisconsin bar ranks among the best in the country.

I cannot see the need nor desirability of this arbitrary measure, particularly in these times of emergency when a great number of young lawyers affected thereby are in the armed forces of the United States fighting to preserve the principles of democracy which this bill would restrict. It seems to me that the least we can and should do is to postpone legislation of this character until these young men return and are given an opportunity to express themselves on it.

From its very inception, the legal profession has been recognized as semi-public servants of the people. It is the first line of defense in the guarding and protection of human rights and liberties. Its training in and knowledge of the laws and constitution and the details and operation of government, pre-eminently qualify it as the protector and defender of human rights. It should be constantly on guard to oppose, at its very inception, the slightest attempt to encroach on the fundamental of human rights and liberties. In this instance that duty seems to have been forgotten or ignored,—for what reason, it is not my province to determine.

The liberties we enjoy were only acquired after centuries of struggle. The liberal nations of the world are now engaged in a death struggle for their protection. I would be false to my ideals were I to approve of bill No. 56, S,

with its denials of individual freedom of action. If this were eliminated, I would very gladly sign it.

Respectfully submitted,

WALTER S. GOODLAND /s/
Acting Governor

RESOLUTION ADOPTED BY THE BOARD OF GOVERNORS OF THE STATE BAR OF WISCONSIN ON JUNE 12, 1957

Minutes of Meeting of Board of Governors, State Bar of Wisconsin, Lake Lawn Lodge, Delavan, June 12, 1957, 2:00 p. m.

* * *

Mr. LaFrance presented his recommendations concerning the adoption of Rules of Policy and Procedure Concerning Legislation.

Mr. LaFrance moved the adoption of the Policy and Procedure, as follows:

RECOMMENDED STATE BAR POLICY AND PROCEDURE CONCERNING LEGISLATION

Pursuant to Rule 1, Section 2, of the State Bar Rules, it is undoubtedly incumbent upon the State Bar of Wisconsin to promote advancements in the science of jurisprudence and improvements in the administration of justice. This duty, among other things, obviously requires the State Bar to sponsor, from time to time, needed legislation that is germaine to the functions and purposes of the

State Bar of Wisconsin. Public interest requires that all such recommendations shall have been preceded by careful study and full consideration of the problems sought to be remedied.

These same principles, to the extent possible, apply to all recommendations for or against the enactment of legislation advocated by legislators or by interested groups or by individuals. It is most important that the confidence of the Legislature and of the public be developed and maintained in connection with any recommendations made by the State Bar of Wisconsin concerning legislation.

To the end that a practicable and workable plan may be adopted, the following recommendations are made for the consideration of the Board of Governors:

1. The State Bar, through action of its Board of Governors, will initiate legislation only on such matters as it believes to be of general professional interest. No legislation will be sponsored unless and until the Board is satisfied that the recommendation represents the consensus and the best composite judgment of the legal profession of this state, and that the proposed legislation is meritorious and in the public interest. The text of all proposed legislation shall be carefully prepared and considered and the counsel of the experts in the field involved will be sought wherever possible.

2. The determination of policy as to whether to support or oppose any specific legislation shall be made by the Board of Governors. Such opposition or support shall be expressed as the position of the Board of Governors.

3. Where it is obvious that the membership of the Bar is of a substantially divided opinion, the Board of Governors shall take no definite position; but in any case, the

Board may direct that its vote on any measure be reported to the Legislature as indicative of the diverse views of the members of the Board.

4. The Board of Governors may delegate its prerogative to take a position on legislative matters, where the opinion of the Bar is substantially in accord, to the Committee on Legislation, to the President of the State Bar or to the legislative counsel of the State Bar.

5. The Executive Committee may exercise all the powers and perform all the duties of the Board, between the meetings of the Board concerning matters of legislation, unless otherwise ordered by the Board of Governors.

6. The Board of Governors shall designate a legislative counsel, who shall be registered as a lobbyist for the State Bar of Wisconsin, as required by law. The legislative counsel, under the direction of the Board, or the Executive Committee, shall be responsible for the management and administration of the legislative activities of the State Bar. He shall assist in coordinating the legislative work of the several sections and committees with that of the Board of Governors, the Executive Committee and the Legislative Committee. In connection therewith, the legislative counsel, with the consent of the President, shall have the power and right to enter into modifications which appear to be proper. The legislative counsel, with the assistance of the respective committee and section chairmen, shall screen all legislative proposals. Those proposals deemed of special interest or concern to the members of the State Bar shall be propmptly referred to the appropriate section or committee for special study and for recommendation to the Board of Governors. Where prompt action is required, mail

or telephone polls of the officers or the Executive Committee or the committees shall be permissible.

7. The Committee on State Legislation shall, upon request from the Board of Governors, the Executive Committee, the President or the legislative counsel, designate the persons who shall appear on or explain the proposals before the appropriate legislative committee, and arrange for such appearance.

8. Where any section or committee sponsors legislation, which is approved by the Board of Governors, the section officers or the committee chairman may make appearances before the Legislature on behalf of such measures in the name of the section or committee, or request the legislative counsel to so appear.

9. During the session of the Legislature all sections and committees of the State Bar are expected to stand ready to: (a) Participate in explaining the bills recommended or opposed by the State Bar to the committees of the Legislature to whom they are referred; (b) Prepare explanatory material relative to any bill about which a question has arisen since its introduction; (c) Examine all bills advocated by others that would affect the courts, the judiciary, the legal profession, or the administration of justice in any particular, or that would make any changes in the substantive law, and keep the Board of Governors and the Executive Committee fully informed so that ill-advised bills can be opposed and meritorious bills can be supported. Committees of the Legislature should be encouraged to request the State Bar to study and to report its recommendations concerning all bills of this category.

10. The staff of the State Bar will cooperate with all sections, all committees, with individual members and with

local bar associations desiring to have bills drafted for introduction by their request.

11. In order to facilitate a wide-spread study of legislative proposals and developments, the State Bar shall issue a weekly legislative bulletin to its officers, to the members of the Board of Governors, to the Executive Committee, to section and committee chairmen, to the presidents and secretaries of all local bar associations, to judges, and to such other persons as the Executive Committee shall direct.

12. Local bar associations are encouraged to take such action, concerning proposed legislation, as they may deem indicated and to transmit their decision to the members of the Board of Governors in their respective districts and to the officers and the members of the Executive Committee to the end that their recommendations be given prompt consideration.

The motion carried.

STATEMENT OF RECEIPTS AND DISBURSEMENTS OF STATE BAR OF WISCONSIN FOR THE YEAR 1959

(Vol. 32, Wis. Bar Bull., No. 2, p. 28, April 1960)

STATE BAR OF WISCONSIN

Madison, Wisconsin

CASH RECEIPTS AND DISBURSEMENTS

January 1, 1959 to December 31, 1959

Cash in Bank, January 1, 1959		$ 5,013.92
Receipts		
Dues	$ 81,130.00	
Advertising	6,914.76	
Subscription	343.75	
Sale of Leaflets	2,748.27	
Supreme Court Calendar Service	734.00	
Institutes	1,290.25	
Interest	1,361.01	
Miscellaneous	738.08	
U. S. Treasury Bills, Matured	128,860.65	
Gross Receipts		$224,120.77
Receipts plus Opening Cash		$229,134.69
Disbursements		
Salaries	$ 35,571.42	
Quarters	4,475.27	
Bar Bulletin	10,341.48	
Postage	3,500.00	
Stationery and Paper	1,325.66	
President's Expense	1,446.23	
Board and Officers Expense	1,906.56	

Travel, Executive Secretary	1,151.27	
Travel, Special Investigator	577.84	
Convention Expense	1,184.25	
Midwinter Meeting	1,699.21	
Institutes	517.98	
Regional Meetings	277.20	
Public Relations	2,743,55	
Committee and Sections	1,138.74	
Office Operations	6,867.23	
Social Security	638.31	
Tax Account Reserve (Home Savings & Loan)	3,300.00	
Depreciation Reserve (U. S. Treasury Note)	5,000.00	
U. S. Treasury Bills, Purchased	118,899.05	
Deposited in Anchor Savings & Loan	7,500.00	
Deposited in Provident Savings & Loan	7,500.00	
Total Cash Disbursements		$217,561.25
Cash in Bank, December 31, 1959		$ 11,573.44

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